



Zachary Beck
City Clerk
201 North Broadway, Escondido, CA 92025
Phone: 760-839-4617 Fax: 760-735-5782

January 10, 2019

Sent via Electronic Mail: tomj@nbc.com

Tom Jones
Executive Investigative Producer
NBC San Diego
tomj@nbc.com

Dear Mr. Jones:

Thank you for contacting the City Clerk's Office with your public records request needs. I write to respond to your Public Records Request received by the City of Escondido on December 31, 2018, regarding internal affairs investigations in which sustained findings were made in types of investigations that you specified. Concurrent with your request, the City received five other public records requests seeking similar information. City staff has been diligently searching for responsive documents and we will fully comply with the new disclosure requirement established by Senate Bill 1421.

The City's records retention policy sets a five-year retention period for internal affairs investigations. In accordance with the City's procedures, the Police Department annually seeks authorization from the City Council to dispose of records eligible for destruction. Upon approval of the City Council, the Department may dispose of records that are no longer required.

Each shooting case identified below was independently investigated by the San Diego County District Attorney and we will promptly provide the records in the City's possession associated with that review. Except for internal affair investigations, the Escondido Police Department does not maintain separate files in the categories requested. Each records request requires an independent analysis to determine where responsive documents might be found. The City recognizes the reasonable obligation to look for documents in places where City experts believe the documents might exist. We will continue to look for potentially responsive documents and will provide updates every ten days until you are satisfied or we cannot reasonably find additional records.

To date we have identified the following:

- 1) An officer's discharge of a firearm on a member of the public.

We have identified nine incidents in the last ten years and are gathering the potentially responsive records. We have not found any sustained findings in internal affairs investigations. The Escondido Police Department officers

discharged their firearms seven times in ten years and the Department also conducted two investigations regarding City of San Diego Police Department officer shootings in the City of Escondido.

Victim	Incident Date	Police Department
Osbaldo Ramirez-Jimenez	03/17/2018	Escondido
Damon Arthur Seitz	03/10/2017	Escondido
Aaron Lee Devenere	01/26/2014	SDPD
Pedro Martinez Campos	05/04/2013	Escondido
William Daniel Mayes	06/05/2013	SDPD
Michael Joshua Flores	10/29/2011	Escondido
Van Dinh Le	03/03/2011	Escondido
Randy Wayne Mulling	03/30/2010	Escondido
Jennifer Lyn Favreau	10/15/2009	Escondido

- 2) An officer's use of deadly force on a member of the public.

See response above. Except for the Michael Joshua Flores shooting, each shooting by Escondido Police Department officers resulted in a fatality.

- 3) Alleged sexual assault or misconduct by a peace or corrections officer.

We have found no responsive records.

- 4) Incidents in which the dishonesty of an officer directly impacted the reporting, investigation or prosecution of a crime, or was directly related to the reporting of, or investigation of, misconduct by another peace or custodial officer, including but not limited to a finding of perjury, false statements, filing false reports, destruction, falsifying or concealing of evidence.

We have found no responsive records.

I believe the attached documents will meet your needs. If you need additional records, please let me know.

Sincerely,



Eva Heter, CMC
Assistant City Clerk

Attachments

cc: Erik Witholt, Escondido Police Sergeant

330 West Broadway
San Diego, CA 92101
(619) 531-4040
SanDiegoDA.com

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

SUMMER STEPHAN
DISTRICT ATTORNEY

December 10, 2018

Chief of Police Craig Carter
Escondido Police Department
1163 North Center City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Osbaldo Ramirez-Jimenez on March 17, 2018, by Escondido Police Officer T. Pizzuti; San Diego Sheriff's Case # 18-114439; DA Special Operations Case No. 18-043PS; Deputy District Attorney Assigned: Paul Reizen

Dear Chief Carter:

We have reviewed the reports and other materials compiled by the San Diego Sheriff's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Osbaldo Ramirez on March 17, 2018, by Escondido Detective T. Pizzuti. A District Attorney Investigator responded to the scene and was briefed by investigators. This case was presented to the District Attorney's Office for review on August 20, 2018.

Persons Involved

At the time of the incident, Mr. Osbaldo Ramirez was a 50 year old resident of San Diego County. Detective T. Pizzuti had been a police officer for four and half years and was assigned to the Gang Investigations Unit.

Summary

On March 17, 2018 at approximately 7:35 p.m., Escondido Police received a domestic-violence call at Mr. Ramirez's home in Escondido. Ramirez was armed with a hand gun and attempting to flee the scene. Officers responded to the call and attempted to stop Ramirez, but Ramirez failed to yield and fled the area. The officers pursued Ramirez through Escondido into Valley Center and ultimately to the front entrance of the Valley View Casino in Valley Center. Ramirez exited his vehicle and displayed a handgun. Ramirez turned toward Det. Pizzuti, who fired multiple gunshots at Ramirez. Ramirez was struck by the gunfire and ultimately succumbed to his injuries.

Background

Mr. Ramirez and his wife were married for 25 years and had three children together. Their relationship deteriorated and the couple was discussing a divorce causing Ramirez to become depressed. Over the last several months leading up to the incident, Ramirez made several suicidal statements to his family and friends.

Witness Statements

Witness One (W1)

Witness One was married to Mr. Ramirez and the two lived together. On the incident date, W1 spoke with Ramirez over the phone and told him she wanted to end the relationship. This upset Ramirez and an argument ensued. W1 eventually agreed to allow Ramirez to come home later that afternoon to take a shower and drink alcohol.

Later that evening, W1 left to meet with her friend Witness Three, while Mr. Ramirez remained at the residence with their son. While she was on her way to her friend's house, she received a phone call from her son who told her she needed to return home, because Ramirez was "going to hurt himself." W1 returned home and observed Ramirez in the driveway with their son. W1 noticed Ramirez was extremely upset and kept saying "I don't care about my life. I don't care what happens to me." W1 and her son attempted to calm Ramirez, but they were unsuccessful due to his level of intoxication. Mr. Ramirez told W1, "you don't want to talk to me? This is going to be the last time you see me." Ramirez then left the scene in his vehicle.

Witnesses Two and Three (W2 and W3)

Witnesses Two and Three, a married couple, made plans to meet W1 for dinner that evening. W1 called W2 and said something happened at her house. W2 heard W1 say, "he's got a gun and he is going to kill himself."

W2 then contacted the Escondido Police Department as W2 and W3 drove to W1's house. They arrived at the house and observed several members of the family attempting to prevent Mr. Ramirez from leaving the residence. W3 heard W1 and Witness Four telling Mr. Ramirez, "relax, give me the gun." During the incident, W2 and W3 both heard Ramirez say something to the effect of, "call the police, I'm going to pull my gun and I know they are going to shoot me."

Mr. Ramirez subsequently got into his vehicle and drove away from the scene. During the incident, W2 noticed Ramirez was intoxicated and could smell an odor of alcohol emanating from Ramirez's person.

Witness Four (W4)

Witness Four said his father Mr. Ramirez was very depressed for several months due to the separation from his wife and was drinking that night. W4 said his father had been planning for two weeks to kill himself on this specific night. W4 attempted to physically prevent Ramirez from leaving the house because he thought he was going to kill himself. W4 initially told officers he never saw his father in possession of a gun, but later admitted to SDO detectives he tried to wrestle the gun from Ramirez, and was actually able to remove the magazine from the gun.

Witness Five (W5)

Witness Five is Mr. Ramirez's mother-in-law. Ramirez had been drinking, which was unusual for him. Ramirez stated he wanted to hurt himself. W5 admitted Ramirez might have had something on him he could have used to hurt himself. Ramirez wanted the keys to the car, but he was intoxicated and no one would give him the keys. W5 is unsure how he got the keys and did not admit to seeing a gun in Ramirez's possession.

Officer Statements

Officer One (O1)

Officer One learned over dispatch of a domestic-violence incident possibly involving a gun. The reporting party stated the male suspect involved had left in his vehicle and provided a description of the vehicle. At 7:49 pm, O1 spotted Mr. Ramirez's vehicle leaving the area and got behind it as it exited and drove southbound. O1 attempted to conduct a traffic stop and the vehicle fled, initiating a pursuit. O1 put out over the police radio the suspect had thrown what he believed to be a gun from the vehicle near Vista Verde Way and Skyview Glen.

At one point during the pursuit, Mr. Ramirez's passenger side of the vehicle struck the side rock wall, causing rocks to fall into the roadway, but he continued to flee. At about 7:55 p.m., after passing the lake, Ramirez stopped his vehicle in the northbound lane and abruptly opened the driver's side door.

O1 stopped his vehicle and started to get out of his vehicle to initiate a "felony hot stop." Another officer stopped his vehicle and exited to assist in the hot stop. Ramirez quickly closed the door and accelerated the vehicle, and continued northbound on Lake Wohlford Road. Det. Pizzuti then took the lead in the pursuit.

As the pursuit neared the Valley View Casino, Mr. Ramirez turned left onto Nyemii Pass Road, almost colliding with a charter bus exiting onto northbound Lake Wohlford Road. Ramirez then turned into the driveway entrance to the casino and O1 saw Det. Pizzuti follow Ramirez's vehicle into the casino parking lot area. O1 stopped behind another vehicle in the casino parking lot and then heard a rapid succession of gunshots. O1 did not see the shooting, but ran up immediately after hearing shots to assist Pizzuti. O1 approached Ramirez and turned him on his side locating a semi-automatic pistol under Ramirez.

Officers Two and Three (O2 and O3)

Officers Two and Three were riding with Det. Pizzuti when they responded to a radio call of a domestic-violence incident. Both O2 and O3 recalled hearing Mr. Ramirez had a gun per the radio call. The next information given was Ramirez taking off in his car. A pursuit ensued with Ramirez's vehicle and about three other police units. Pizzuti continued to pursue Ramirez into the casino driveway. Ramirez ultimately pulled into the valet area. Pizzuti pulled in behind Ramirez's vehicle.

When Mr. Ramirez pulled in, he stopped quickly and O2 saw the driver side door open. O2, Pizzuti and O3 exited the patrol vehicle quickly. O2 did not have a clear view of the Ramirez's body, but did observe a gun inside Ramirez's right hand, which came out of the car first. He could see the top of Ramirez's head and body began turning toward Pizzuti.

O3 believed Mr. Ramirez was armed with a firearm given the previous information given from dispatch and therefore drew his handgun. Additionally, O3 heard someone yell "gun," but did not know who said it. O3 saw Ramirez turn his body and begin exiting his vehicle. O3

saw something silver in color in Ramirez's hand, and then clearly recognized the object as a gun as Ramirez exited his vehicle.

O2 heard Det. Pizzuti yelled something, possibly, "gun." O2 then heard gunshots followed by Pizzuti yelling out something.

O3 heard gunshots and then saw Mr. Ramirez immediately drop to the ground. O3 approached Ramirez to handcuff him and saw a gun in Ramirez's hand.

Both O2 and O3 believed if Ramirez's actions were not stopped he could have injured or killed the officers or any of the patrons at the casino.

Detective Pizzuti

Detective Pizzuti volunteered to respond to a domestic-violence incident involving a male subject (Mr. Ramirez) armed with a gun. Pizzuti heard dispatch state Ramirez was leaving the location in his vehicle and Pizzuti believed Ramirez was still armed with a gun.

O1 saw Mr. Ramirez's vehicle and got into a position travelling behind the vehicle. O1 attempted to initiate a traffic stop, however Ramirez would not yield. Det. Pizzuti recalled hearing O1 put out a pursuit over the radio with Ramirez heading southbound on Vista Verde towards El Norte Parkway.

The pursuit continued eastbound on El Norte Parkway, with Mr. Ramirez driving at a high rate of speed through multiple red lights. The pursuit continued to Valley Parkway, going northbound towards Valley Center.

Mr. Ramirez approached the casino and a large bus began exiting out of the casino complex. The bus had a green light and the pursuit direction of travel had a red light. Det. Pizzuti slowed his speed to prevent a collision, while Ramirez maintained speed. The bus stopped blocking the road, and Ramirez turned towards the casino parking lot. Ramirez made a "hard right" and travelled in the direction of the casino valet, while Pizzuti followed close behind.

Mr. Ramirez came to a stop and Det. Pizzuti stopped behind Ramirez's vehicle. Pizzuti could see the driver's door of Ramirez's vehicle open as Pizzuti opened his patrol vehicle door. Pizzuti stood up out of his vehicle, leaving his door open. Pizzuti cleared his patrol car door, side stepping to the left.

There were multiple cars in and around the valet area. Det. Pizzuti decided to take cover behind the vehicle to the left of his patrol vehicle. Pizzuti observed Mr. Ramirez standing up from his vehicle holding a silver semi-automatic handgun in his right hand.

Det. Pizzuti saw Mr. Ramirez's arms come up towards Ramirez's upper body. Pizzuti un-holstered his firearm while calling out to his partners, saying "gun, gun, gun!" Ramirez was still bringing his hands up holding the gun, while squaring off to Pizzuti. Pizzuti thought Ramirez was going to shoot him. Pizzuti fired at Ramirez multiple times as Ramirez would not drop his gun. Pizzuti believed if he had not used force, the lives of the public and his fellow officers would have been placed in immediate danger as Ramirez was armed and violent. Pizzuti was also concerned Ramirez could turn the incident into a hostage situation at a crowded venue on a holiday weekend.

Investigation

The crime scene was secured, photographed, and investigated by San Diego Sheriff's Office Homicide detectives. All detectives' reports, crime-scene investigators' reports, and audio-recorded witness interviews were reviewed.

The shooting event was captured on the closed-circuit video cameras located in the valet area of the Valley View Casino main entrance. The footage from the video cameras showed Mr. Ramirez drive onto the casino property and pull into the valet area near the main entrance. Several police vehicles are seen following Ramirez including Det. Pizutti's. Mr. Ramirez is seen stopping his vehicle and exiting the vehicle as soon as it comes to a complete stop. Ramirez opens the driver's side door with his left hand and looks back at the officers. Mr. Ramirez begins to exit the vehicle and face back toward the officers and appears to have a light color object in his right hand. Ramirez then falls to the ground. A different casino camera shows officers rendering medical aid to Ramirez and what appears to be a silver semi-automatic pistol is seen on ground near the front tire of Ramirez's vehicle.

Portions of the incident were captured by officers' Body Worn Cameras (BWC). However, none of the footage captured the shooting. BWC video shows officers handcuffing Mr. Ramirez after the shooting. A black and silver semi-automatic pistol is visible on the ground next to Ramirez's right knee.

On March 19, 2018, Dr. Vivian S. Snyder performed an autopsy of Mr. Ramirez. The autopsy documented 16 gunshot wounds to the head, torso, arms and legs; three of these wounds may have been reentry wounds.

Toxicological studies performed on blood collected from Ramirez indicated a blood-alcohol content of 0.11%.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The purpose of the District Attorney's review is to provide an independent analysis and determine if the shooting was legally justified.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person whom he has reasonable cause to believe has committed a public offense.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'"

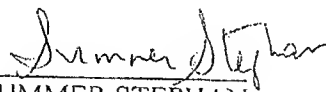
The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Graham v. Connor* (1989) 490 U.S. 386, citing *Terry v. Ohio*, 392 U.S., at 20-22.

In addition to any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if she reasonably believed that she or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger.

Conclusion

In this case, Mr. Ramirez led officers in a vehicle pursuit after arming himself with a handgun and telling family members he wanted to have police officers shoot him. Detective Pizutti pursued Ramirez to the valet area of the main entrance to the Valley View Casino, where Ramirez exited his vehicle and raised the handgun in the direction of Pizutti. Based on these circumstances, Pizutti fired at Ramirez in his own defense and in the defense of his fellow officers. He therefore bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

SS:gm

cc: Sheriff William Gore
San Diego Sheriff's Department

DATE: Sept 15, 2011
TO: Chief Jim Maher
FROM: Captain Robert Benton – Chairperson
C.C: Deputy City Attorney Michael McGuinness
SUBJECT: Review of Officer Involved Shooting Incident #09-15148

The Shooting Review Board has reviewed the Officer Involved Shooting incident relative to Escondido Police Department Case #09-15148.

Board of Review:

Captain Robert Benton Uniform Bureau Commander - Chairperson
Lieutenant Craig Carter - Investigations Commander
Lieutenant Christopher Wynn - Investigations Commander
Lieutenant Mark Wrisley - Training Manager

Involved Officer: Detective Timothy Reiley #335

Date & Time: October 15, 2009, at approximately 1130 hours.

Location: The Western parking lot/driveway of 1811 E. Grand Ave.

Finding: Within Policy

Involved Party:

Deceased: Jennifer Lynn Favreau
Suspect: Christopher Ramirez

Synopsis:

On 10-15-09 at about 1130 hours, Christopher Ramirez drove a stolen 2005 Ford Focus through the parking lot of 1811 E. Grand Ave in Escondido. The car was reported stolen on 10-06-09. Jennifer Favreau, his girlfriend, was his passenger and assisting Escondido Police Investigators in the apprehension of Ramirez. Escondido Police Department Special Investigations Unit (SIU) detectives were on scene and attempted to stop Ramirez as he drove out of the parking lot.

Officer Dixon, who was assigned to SIU, was wearing a load bearing raid vest with a sewn on cloth police badge and a patch on the front and back that reads "POLICE."
Officer Dixon exited an unmarked police car and from about eight feet away, pointed his

pistol at the driver identified as Christopher Ramirez. Officer Dixon yelled "Police" at Ramirez, noticing that the car windows were down. Ramirez stopped suddenly and put the car in reverse, quickly backing up and colliding with a stopped undercover vehicle driven by Detective Naranjo pushing the vehicle laterally.

Following the collision with Naranjo, Ramirez quickly drove forward and swerved to the left directly toward where Detective Reiley (on foot) was standing. Detective Reiley was also wearing a police raid vest marked similar to Officer Dixon's vest. Detective Reiley said he pointed his pistol at Ramirez and fired his service weapon at Ramirez about four times. Detective Reiley said Ramirez's vehicle passed within one to two feet of him. Officer Reiley said he was afraid for his life and thought Ramirez was trying to run him over. Officer Umstot and Detective Berreth (both on foot) were also within feet of the moving car. Officer Umstot and Detective Berreth had to jump and run out of the way to avoid being struck by the vehicle.

Ramirez continued driving forward and rammed into the front end of a stopped black and white police car, which was blocking the exit to the complex. Officer Stephens was in the driver's seat of the police unit and braced himself as he knew he was going to be hit by the oncoming vehicle being driven by Ramirez. The force of the collision pushed Stephen's stopped police car back approximately five feet. The Ford Focus was disabled as a result of the collision and Ramirez, who was uninjured, was taken into custody. Jennifer Favreau, who was the front seat passenger, had been unintentionally shot by Detective Reiley and was transported to Palomar Hospital where she later died as a result of her injuries.

Ramirez was arrested at the scene and waived Miranda. Ramirez admitted that he took the Ford Focus on 10-14-09 and claimed the keys were in the ignition when he acquired the vehicle. Ramirez said he saw the officer point a gun at him. Ramirez denied seeing the officers in their raid vests and claimed he thought the officer was a "Homie." Ramirez is on active parole for auto theft. A parole agent placed a parole hold on Ramirez, per PC 3056. Ramirez was charged with three counts of P.C. 245(c) assault on a peace officer. Ramirez also had a small quantity of methamphetamine in his possession, a violation of H&S 11377(a).

On February 4, 2011, the San Diego County District Attorney's Office, Special Operations Unit, completed their review of this incident and found that Detective Reiley did not violate any criminal laws during the incident.

On November 17, 2010, Christopher Ramirez plead guilty to four counts of assault with a deadly weapon, possession of a controlled substance and driving a stolen vehicle and received a sentence of 10 years in state prison.

Shooting Review Board Investigation:

While the Shooting Review Board was convened, the following actions were taken by members during the investigation:

- Received an overview of the incident by Sgt. Diana Provost, and Detective John O'Donnell the case agent both of the Crime of Violence (COV) Unit.
- Read and reviewed the investigation completed by the Escondido Police Department Crimes of Violence Unit.
- Read all transcripts of the involved officer interviews, Ramirez interview and written reports submitted by officers.
- Reviewed the photographs of the scene. These photos included overall and detail photos of how the scene looked immediately following the incident. Overhead photographs of the incident scene were also taken by helicopter within hours of the incident.
- Reviewed video footage taken from Officer Walters' motorcycle immediately following the shooting incident.
- A physical inspection of the scene was conducted.
- Review of all radio transmissions leading up to the incident, during the incident and immediately following the incident.
- Inspected the vehicles driven by Christopher Ramirez, Detective Naranjo and Officer Stephens.
- Reviewed the scene diagram created by the Traffic Division, which depicted where the officers and detectives were standing during the incident relative to the vehicle being driven by Christopher Ramirez. The Traffic Division also created an animation that showed the incident from Detective Reiley's perspective.
- Interviews were conducted with Acting Sergeant Whitaker who was the scene supervisor and Sgt. Ellis who is the supervisor of the Special Investigations Unit.

Findings of the Board:

This Shooting Review Board looked primarily at issues of Policy, Tactics, Training, and Equipment. The following are the findings of the Board and are not in any specific order.

Policy:

- The Shooting Review Board has determined this shooting was within department policy. This finding is based on Detective Reiley's statement to the investigators that Ramirez drove at a high rate of speed directly at him and other officers. Additionally, Officer Umstot stated that he had to jump out of the way to avoid

being struck by Ramirez. Detective Reilcy stated in his interview, "I remember I thought I was going to get hit. I was trying to get out of the way. And I remembered I fired towards the windshield, towards him. Then, I kept trying to get out of the way, moved to my right and he kept coming closer and I fired another, I think three times. I remember him coming within I think a foot or two of me." "I thought he was going to, uh, going to hit me or, or Bodie and I..." Detective Reiley stated he utilized deadly force to protect his life and the life of other officers. Department Instruction 1.5 states, "It is the policy of the Escondido Police Department that armed personnel shall use a firearm only as a last resort when it reasonably appears necessary, and according to law." It further states that officers may use deadly force "to protect themselves from death or other serious bodily injury; or to protect another officer or any person from death or serious bodily injury."

- Additionally, the department also has a policy regarding shooting at a moving vehicle. Department Instruction 1.5, V. D. 2. states; "Firing at or from moving vehicles is generally prohibited. Experience shows that such action is rarely effective and is extremely hazardous to innocent persons. Only in extremely rare and extraordinary situations is such action justified. Extremely rare and extraordinary situations are those that necessitate the use of a firearm as the ultimate measure of defense of self or another when the suspect is using deadly force." It is the findings of the Shooting Review Board that Officer Reiley fired in the ultimate measure of defense for himself and the other officers who were in front of Ramirez vehicle. The Board based their findings on Officer Reiley's statements, the witness officers and the physical evidence at the scene.

Tactics:

- The shooting review board reviewed the tactics used by investigators in this shooting incident. The board understands that each incident is unique and dynamic. The tactics used and the decisions made were based on training, experience and how this department has handled this type of incident in the past. According to the Detective Cirilo, who was the case agent, told investigators the decision to allow the car to begin driving was based on a multiple of factors. Primarily the greatest concern was an adjacent elementary school separated only by a low chain link fence which would easily be jumped if a foot pursuit ensued. The detectives on scene quickly realized that Oakhill Elementary School was adjacent to the area where the stolen vehicle was parked and that children playing in the yard could be in danger. The school was contacted and locked down prior to any actions being initiated. However, there was no way to clear all of the children from the yard or the parking area adjacent to where the car was parked. Any confrontation or foot pursuit with the suspect in that vicinity could have been extremely dangerous for the children present. Also discussed was not allowing the vehicle out of the parkinglot, which likely become a vehicle pursuit and put many other lives in jeopardy. It was decided to allow the vehicle to move to the west parkinglot area which was void of persons at the time. They planned to

block Ramirez in with two undercover vehicles and the vehicle with the use of both marked and unmarked police cars.

- According to Detective Cirillo's statement it was not his intention to allow Jennifer Favreau to be with Christopher Ramirez during the intervention and told her it was "a bad idea". However when he witnessed her getting into the vehicle he should have clearly communicated this information to the other units. It was not.

Training

- Communications regarding the suspect's actions need to be clearly transmitted. When Favreau and Ramirez approached the car, Detective Cirilo broadcast that the female was approaching the car. Some officers understood that Favreau was in the car, but Detective Reiley did not. After a review of the radio transmissions, it was realized the communication was not clear.
- It does not appear that ongoing and meaningful communications were present between the unit supervisor Sgt Ellis and patrol supervisor Acting Sgt Heath. Sgt. Ellis briefed the Watch Commander initially, but as the surveillance unfolded, there was little communication between investigations and the patrol supervision team.
- Although the scene was locked down quickly by on scene investigators and evidence was preserved, Detective Reiley's weapon was taken by a patrol supervisor and secured in a trunk of a police vehicle. This is not the best method of evidence collection.
- During the interviews of the involved officers, the case agent asked several leading questions, interrupted or spoke over the interviewee and at times did not allow the officers to answer questions for themselves.
- Although first aid was immediately provided to Favreau, officers need to ensure they are using the appropriate language and are following the most current training protocols when documenting their efforts.
- During the interview of the involved officers, the case agent asked many leading questions and interrupted the officers when they were attempting to provide their answers. Additionally, several officers were not asked some of the most basic questions such as, "did you fire your weapon?" and "why or why not?" Also the investigators often times talked over the person answering the question resulting in a number of unintelligible responses.

Equipment

- Although Officer Reiley and Dixon were clearly identifiable as police officers, not all of the plainclothes personnel were wearing the appropriate police designations at the time of the takedown. The board recognizes that the nature of undercover work may preclude officers from wearing police markings all the time, however when an arrest situation occurs, officers must take the time to don their police vests and department identification or utilize quickly removable cover-ups.

Recommendations:

Based on the investigation, the Shooting Review Board recommends the following:

- The board believes in future situations where the use of undercover or marked vehicles to block a suspect's means of egress, a direct supervisor of the personnel involved should be present or another supervisor who has been designated as the on-scene supervisor. In this case, an acting patrol supervisor was present, but was not aware of all the facts of the case and could not approach the location being in uniform and in a marked vehicle not allowing him to fully supervise the incident. In the event that a supervisor is unable to be present on scene, an acting supervisor should be designated and that authority should be communicated to all involved. Additionally, the supervisor of the investigations unit should keep the patrol supervision team informed of plans and developments, particularly if patrol assets are to be used.
- Additional training in officer involved shootings should be provided to detectives especially in regards to interviewing techniques and questions to ask. In addition investigators should provide a summary of each interview rather than relying on transcripts of interviews.
- A standard checklist of questions should be developed for detectives to use to make sure that all pertinent questions are asked of the involved officers.
- A checklist of who should be submitting reports should be created at the earliest convenience. All officers and supervisors should submit reports within department guidelines.
- Department Range training should be conducted regarding the dynamics of shooting at moving threats.
- Discussions at the command/management level should occur to determine how the department will handle stolen vehicles that are located unoccupied. A policy may need to be implemented regarding if the vehicle will ever be allowed to move with a suspect driving and what level of force will be acceptable to stop a stolen

vehicle from moving. The weight of a property crime versus the potential outcome should be discussed.

- Discussions at the command/management level should occur to review the department's current policy regarding shooting at moving vehicles. The Department's current policy states that shooting at moving vehicles is generally prohibited.
- As stated above not all plainclothes detectives on scene wore clothing clearly identifying them as police. It is recommended that the department research and purchase items allowing investigators to quickly don gear that would clearly identify them as law enforcement both from the front and rear.

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

BONNIE M. DUMANIS
DISTRICT ATTORNEY

<http://www.sandiegoda.com>

June 13, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. William Daniel Mayes on June 5, 2013 by San Diego Police Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman and Sergeant Marc Pitucci; Escondido Police Department Case No. 13-6916; DA Special Operations Case No. 13-076PS; Deputy District Attorney Assigned: Paul Azevedo

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Robbery/Homicide Unit concerning the fatal shooting of Mr. William Daniel Mayes by San Diego Police Officers Zachary Pfannenstiel, Arturo Lovio, Nestor Hernandez, Jonathan DeGuzman and Sergeant Marc Pitucci on June 5, 2013. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on January 16, 2014.

Summary

On the night of June 5, 2013, San Diego Police officers and detectives attempted to arrest Mr. William Daniel Mayes. Mayes tried to evade arrest by driving away in his Ford Explorer. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle. Mayes pointed a shotgun in the direction of officers who then fired at Mayes. Mayes was struck multiple times and died at the scene. The Metropolitan Arson Strike Team responded. They recovered and detonated numerous improvised explosive devices recovered from Mayes' person and vehicle.

Persons Involved

Mr. William Daniel 'Danny' Mayes was 37 years old at the time of this incident and lived in the City of San Diego with his father.

Officer Zachary Pfannenstiel and Officer Jonathan DeGuzman were in full uniform and assigned to the Gang Suppression Team. Detective Nestor Hernandez, Detective Arturo Lovio, and Sergeant Marc Pitucci were assigned to the Robbery Unit. Each wore a tactical police vest that was clearly marked with the word "POLICE" on the front and back.

Background

William 'Danny' Mayes was suspected of physically and mentally abusing his father. The father reported his son's violent behavior to the San Diego Police Department. The father feared for his own safety and said 'Danny' Mayes used drugs in the past and thought his son might be mentally ill. The father told a detective his son had manufactured a handgun and a bomb. He also said 'Danny' installed a camera outside of the residence to view anyone approaching and threatened to "shoot it out" with police if they ever went to the house. The father said he did not want police to go to his residence because he did not want any innocent police officers to get hurt or killed. A family friend corroborated the father's statements and said he witnessed Mayes in possession of a homemade handgun and several pipe bombs. The friend told police Mayes was usually armed.

Officer Involved Shooting

A plan was devised by police to attempt to safely arrest Mayes. The plan involved having a friend of the Mayes family telephone Mayes and asked for help with a flat tire. The friend instructed Mayes to meet at the Park & Ride lot, located at 3300 Del Lago Boulevard in the City of Escondido. Several marked SDPD vehicles were strategically assembled at a nearby location to take Mayes into custody when he arrived. Plain clothes detectives driving unmarked police cars followed Mayes to the prearranged location.

As Mayes approached the parking lot, marked SDPD vehicles entered the area. When Mayes detected the presence of the police, he drove his vehicle around a transit bus and sped out of the lot by driving over a traffic island and sidewalk. Mayes continued speeding across Del Lago Boulevard over the sidewalk on the opposite side of the street and crashed into a concrete retaining wall. Officer Pfannenstiel rammed his patrol car into Mayes' vehicle, striking the driver's side door, pinning Mayes' vehicle against the wall. Pfannenstiel's police car was positioned perpendicular to Mayes' vehicle. Pfannenstiel, Hernandez, Lovio and Pitucci positioned themselves around Mayes' vehicle and saw Mayes point a weapon at them. They fired their pistols at Mayes. DeGuzman believed Mayes was shooting and also fired at Mayes. Mayes was struck by the gunfire.

Sergeant Grubb controlled the shooting scene and had Officer Pfannenstiel back his car out to allow other officers to render aid to Mayes. An arrest team approached and removed Mayes from his vehicle. They recovered his homemade shotgun. When they noticed an improvised explosive device on the floorboard and a backpack on the back seat of Mayes' vehicle, they retreated to a safe distance and left Mayes on the ground next to his vehicle. Mayes died at the scene.

Officer Pfannenstiel's Statement

Officer Pfannenstiel said before the arrest, he attended a briefing led by Sergeant Marc Pitucci. From the information presented, Pfannenstiel learned Mayes was wanted for elder abuse and had allegedly constructed several pipe bombs and handguns, including a rapid fire Tec 9 handgun. Mayes allegedly vowed not to be taken into custody alive. The officers planned on arresting

Mayes at a safe location away from his house. They reviewed overhead maps of the Park & Ride in Escondido. Pfannenstiel was assigned to block traffic at the intersection of Del Lago Boulevard and Avenida Magoria.

Pfannenstiel saw Mayes driving a Ford Explorer. Mayes was followed by several police vehicles. Pfannenstiel took his position at the intersection and saw Mayes' vehicle turn, then speed away from the other officers. Mayes drove over the lane median, made a wide southbound turn onto Del Lago and crashed into a planter retaining wall. Pfannenstiel thought Mayes was trying to get away and possibly run over the detectives. Pfannenstiel rammed into the driver side of Mayes' SUV. Pfannenstiel pinned Mayes' vehicle against the wall. Pfannenstiel got out from his car and stood at his open police car door. Pfannenstiel yelled, "Show me your hands!" Mayes did not comply but Pfannenstiel could see Mayes made eye contact with him. Mayes reached for his own waistband and it appeared Mayes was trying to get his gun out. Pfannenstiel saw Mayes had a grip on a black gun and Mayes leaned back, over his center console as he continued trying to pull the gun out from his waistband. Mayes' head was by the passenger seat while his legs and feet were fully extended near the driver side emergency brake. Pfannenstiel thought Mayes was pointing at the gun towards him and was going to shoot him through the driver door. Pfannenstiel fired at Mayes until he saw Mayes slump over.

Detective Hernandez's Statement

Detective Hernandez said he learned Mayes was wanted for elder abuse and recalled receiving information that, according to two different sources, Mayes threatened to, "Kill the cops or have the cops kill him." Hernandez was also aware of the information regarding Mayes constructing pipe bombs and being seen with a Tec 9 handgun.

When the phone call was made to Mayes as planned, Hernandez and other detectives followed Mayes from the residence to the Park & Ride on Del Lago Boulevard in Escondido. Hernandez saw Mayes drive into the Park & Ride lot at the same time a transit bus was driving out. Once Mayes made it out of the lot, he lost control and struck a wall across the street. The front end of Mayes' vehicle was off the ground and the back tires were spinning.

Hernandez got out from his vehicle and ran toward Mayes. Hernandez saw Mayes point the barrel of a gun at him. At that point a marked police car rammed Mayes' vehicle. The glass on the driver side window of Mayes' vehicle shattered. Hernandez saw Mayes lying back across his front seat while pointing a weapon at him and the uniformed officer. Hernandez fired his handgun at Mayes until he saw Mayes had stopped moving.

Detective Lovio's Statement

Detective Lovio was also aware of the information relating to Mayes regarding bombs and guns. Lovio was assigned to stop northbound traffic on Del Lago while Mayes was taken into custody. Mayes drove into the lot. Lovio took his position on Del Lago Boulevard and got out of his truck. Lovio looked over his shoulder and saw Mayes' vehicle had turned and jumped the curb into the parking lot. Mayes sped out of the lot and eventually crashed into a wall.

Lovio approached Mayes' vehicle on foot from in front of the vehicle. Lovio saw the tires on Mayes' vehicle were spinning. Lovio expected Mayes to escape by running over Lovio. Lovio saw Mayes raise the barrel of a gun. A marked police car drove into the driver side of Mayes' SUV and jammed it against a wall. Mayes continued to raise the barrel of gun. Lovio fired several rounds at the windshield of Mayes' vehicle.

Officer DeGuzman's Statement

Officer DeGuzman was working with his partner, Officer Cassie Erickson. DeGuzman was the driver of their police car. DeGuzman and his partner were supposed to help take Mayes into custody in the parking lot of the Park & Ride in Escondido. Mayes sped out of the lot and DeGuzman saw another marked police car ram Mayes' vehicle. DeGuzman stopped his car and got out. DeGuzman heard several gunshots. DeGuzman approached and saw Sergeant Pitucci standing near a police car and firing his gun at Mayes' driver side door. DeGuzman thought Mayes was shooting at the driver's side of the police car. DeGuzman stood to the right side of Pitucci and saw Mayes' left arm was raised while Mayes was looking at the officer. DeGuzman fired three shots toward Mayes. DeGuzman stopped firing when he saw Mayes dropped his left arm and stopped moving.

Sergeant Pitucci's Statement

Sergeant Pitucci supervised the surveillance and helped plan the arrest of Mayes. Mayes was wanted for elder abuse and manufacturing weapons and bombs. A plan (previously described above) was devised to arrest Mayes. They discussed the Boston Marathon bombing incident which occurred two months prior including that those suspects threw improvised explosive devices at their pursuing officers. It was agreed that if Mayes posed an immediate threat, officers were authorized to use their police vehicles to ram Mayes' vehicle.

When Mayes saw a marked police car, Mayes drove around the bus and sped out of the lot. After hitting a curb, Mayes' vehicle went airborne and lost control. Mayes ran into a wall across the street. Pitucci stopped his own unmarked police vehicle at the entrance to the lot and ran toward Mayes' vehicle. Pitucci saw the tires on Mayes' vehicle were spinning as if Mayes was stepping on the accelerator. A marked police car smashed into Mayes' vehicle, pinning it against the wall.

Pitucci stood at the passenger side of the police car that rammed Mayes. Pitucci saw the long black barrel of Mayes' weapon come up. The barrel was pointed in the direction of Hernandez, Lovio and Pfannenstiel. Pitucci then drew his handgun and shot Mayes. Pitucci fired his weapon until Mayes leaned backwards in a non-threatening position.

Witness Statements

Fifteen civilian witnesses consisting of persons standing and sitting in the Park & Ride lot, as well as persons riding in the North County Transit District bus which was driving out of the

parking lot when Mayes and the officers were entering, saw various portions of the events. Some witnesses saw Mayes' vehicle enter and then speed out of the parking lot. The witnesses all reported seeing Mayes' vehicle being chased by police and then hearing several shots being fired from their positions across the street.

Eleven law enforcement witnesses consisting of uniformed officers and plain clothes detectives that took part in the surveillance and planned arrest of Mayes also witnessed various portions of the events.

Investigation

The crime scene was secured for safety purposes. The Metro Arson Strike Team (MAST) Bomb Squad technicians arrived and detonated seven improvised explosive devices at the scene and collected another seven improvised explosive devices prior to any evidence being collected. The explosions disturbed many items of evidence, including casings. The investigation determined Mayes was armed with a homemade shotgun carried in a sling around his torso. Mayes possessed a total of three homemade handguns, seventeen improvised explosive devices (pipe bombs), multiple rounds of live shotgun and handgun ammunition and two knives.

Mayes received seventeen gunshot wounds. The wounds were to Mayes' head, neck, chest, right forearm, left upper arm and forearm, right leg and left leg. The total number of shots fired by the five officers was forty-six. The video and audio recording from the cameras at the Park & Ride Terminal and on the NCTD bus were reviewed for this investigation. The cameras captured the shooting event from across the street as well as the sounds of the gunshots. A toxicology report on Mayes tested negative for drugs of abuse or alcohol.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Chief Craig Carter
June 13, 2014
Page 6 of 6

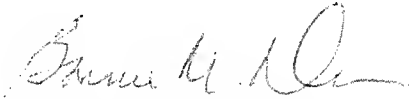
Conclusions

During this incident, several San Diego Police officers and detectives attempted to arrest Mr. William Mayes. They were aware he could be armed with guns and explosives and had expressed he would not peacefully surrender to police. Mayes sped away in his vehicle and crashed into a retaining wall. Mayes pointed a shotgun in the direction of Officers Pfannenstiel, Hernandez and Lovio. Sergeant Pitucci and the officers saw the shotgun and fired at Mayes. DeGuzman saw the shooting and believed Mayes was shooting at the officers. Mayes was struck several times and died at the scene.

Based on these circumstances, it is apparent that Officers Pfannenstiel, Hernandez, Lovio, Deguzman and Sergeant Pitucci fired in self-defense and/or the defense of the others. They therefore bear no criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS
District Attorney
County of San Diego

BMD;jh

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

November 24, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Aaron Lee Devenere on January 26, 2014, by San Diego Police Officer Rick Butera; Escondido Police Department Case No. 14-1049; DA Special Operations Case No. 14-011PS; Deputy District Attorney assigned: Patrick McGrath

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency concerning the fatal shooting of Mr. Aaron Lee Devenere by San Diego Police Officer Richard Butera on January 26, 2014. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on April 25, 2014.

Summary

On January 26, 2014, Mr. Devenere took his girlfriend hostage and forced her to drive her pickup truck while he rode as passenger. Devenere called 9-1-1 and said he was armed with a handgun and a bomb. Devenere threatened to injure the hostage if officers tried to stop the truck. San Diego police officers pursued the truck into Escondido, where they flattened the truck's tires. Devenere placed his right arm around the hostage's head, preventing her from leaving the truck. Butera fired one shot with a rifle and fatally struck Devenere in the head.

Persons Involved

Mr. Aaron Lee Devenere was 27 years old and lived in San Diego. SDPD Officer Richard Butera had been a police officer for 11 years when this incident occurred. He was assigned to the Western Patrol Division and was in full uniform.

Background

Aaron Devenere and Lauren L. knew each other for five months. Lauren L. said she was aware Devenere was married and believed Devenere's wife was aware of their relationship. Devenere was released from jail on January 23, 2014, and ordered to begin a rehabilitation treatment program on January 25, 2014. Early in the morning January 26, 2014, Devenere arrived at his girlfriend's residence and said he wanted a ride. Devenere's girlfriend consented and drove her Toyota pick-up truck with Devenere as passenger.

At 6:56 a.m., a San Diego police officer stopped the truck for a traffic violation. Mr. Devenere stepped out of the truck with his face covered by an item of clothing and faced the officer. The officer ordered Devenere to return to the truck. Devenere jumped back into the truck as it sped away. The officer pursued the truck and called for help.

Mr. Devenere called the 9-1-1 operator during the pursuit and said he was pointing a gun at his girlfriend. Devenere stated he was armed with a handgun and explosives. Devenere said he kidnapped his girlfriend and threatened to harm her if police stopped the truck. Devenere added he would break his girlfriend's fingers if officers did not comply with his demands. Officers continued the pursuit and used tire deflation devices to stop the truck. At 7:37 a.m., the truck came to a stop on the right shoulder of 2100 Centre City Parkway in Escondido.

Officer Involved Shooting

Officers conducted a felony vehicle stop and ordered Devenere to exit the vehicle with his hands in the air. Devenere failed to comply. Devenere moved to the driver's side of the truck's cab and grabbed his girlfriend. Officers saw Lauren L. struggling to escape from Devenere's grasp. Lieutenant Darryl Hoover directed Officer Butera to arm himself with his long rifle and take a position within range of the truck. Hoover told Butera if he had a shot on the suspect to take it. Butera took a shooting position to the south and west of the truck, using the front of a police car for cover and support. Butera aimed through his scope and fired one shot, striking Devenere in the head and killing him.

Officer Butera's Statement

Officer Butera said he was assigned to patrol and recognized the initial radio call as a rolling hostage situation. Butera volunteered to respond because he had the collateral duty of being a member of the SWAT Primary Response Team and also had past sniper training. When the pursuit came to a stop, Lt. Hoover told him to get into position. Butera could hear Lauren L. screaming and saw her trying to get out of the truck. Devenere had his right arm around Lauren L.'s head. Devenere was placing Lauren L. between him and the police officers. Butera aimed at Devenere through his rifle scope. Devenere was not complying with the primary officer's commands. Butera saw Devenere's arms were down low and his left arm appeared to be crammed into Lauren L.'s ribcage. Lauren L. continued to scream and appeared to be trying to escape from the truck. Butera said, "At this point I believe that he's going to kill this woman right now. His threats he made with explosives, with the gun, with great bodily injury...If I don't act now, he's going to kill her." Butera said he had a clear shot and fired one round.

Lieutenant Hoover's Statement

Hoover heard the broadcast of the pursuit and stop on the radio, including the radio dispatcher's updates regarding Devenere's threats to harm the hostage driver. Hoover directed pursuing officers to deploy tire deflation devices to stop the truck. The truck's tires were flattened and it came to a stop on the right shoulder of the road. Officers gave Devenere commands to surrender. Devenere initially placed both of his hands out the passenger window but then retracted them. Hoover saw Devenere move to the left part of the truck's cab. Hoover said Devenere, "Immediately went at the driver. Jumped on the driver." Hoover said Devenere

looked out the rear window and had a “crazed look” on his face. Hoover could no longer see Lauren L. in the truck.

Hoover instructed Officer Butera to get into a position where Butera could make a rifle shot if the situation arose. Thereafter, Hoover heard one shot and realized Butera shot Devenere. The hostage, Lauren L., opened the driver’s door, maneuvered her way out from under Devenere, and ran back to the awaiting officers while sobbing.

Victim’s Statements

Lauren L. said Mr. Devenere lived a couple of blocks away from her. Devenere arrived at her house early in the morning and needed a ride, “to get away from here.” Lauren L. agreed to give Devenere a ride in her truck and noticed he seemed distraught, nervous and on edge. Devenere was on his cell phone and Lauren L. overheard him speaking with someone about not wanting to go to rehab. She began driving on the I-15 freeway when an officer pulled her over. Lauren L. stopped her vehicle on the shoulder and watched as a police officer approached her car through her rear view mirror.

Devenere suddenly turned towards her with his right hand under his sweatshirt. He pushed whatever was in his right hand into her rib cage and told her she needed to drive so she would not get hurt. Lauren L. said she drove away because she was scared and thought Devenere had a gun. Lauren L. was crying and hysterical as she drove the truck North on I-15. Devenere was speaking with someone on his cell phone and saying he was armed with a gun and had explosives. Lauren L. heard Devenere say she would be shot if the cops did not comply with his demands. Lauren L. asked Devenere what was happening but he would not answer.

At one point during the phone call, Devenere grabbed her hand and said he was going to break her fingers to make a point to the cops. The police continued following her. She drove over a spike strip in Escondido. Lauren L. stopped the truck and tried to stick her hands out the driver window but could not reach out. Devenere had her by the neck and twisted her head. Lauren L. complained about the pain and Devenere let go. Devenere was squeezing her hand. Lauren L. cried as Devenere said he was sorry he put her through this. Lauren L. heard Devenere say he was going to get out of the truck and give up. Lauren L. then heard a gunshot. There was blood everywhere and Devenere collapsed. Lauren L. did not know if Devenere shot himself or if he was shot by the police.

Lauren L. was released from the hospital after the incident and said her right pinky finger was not broken. Lauren L. said the truck involved in this incident belonged to her. She owned no weapons or explosives.

Witness Statements:

Ms. Gomez and her two young brothers witnessed the stop from their residence, west of Centre City Parkway. Gomez recorded the events with her iPhone camera. Gomez saw the truck come

to a stop with approximately 8 police vehicles behind it. Gomez saw a police officer with a rifle and heard a single gunshot. A few seconds later, Gomez saw a female exit the driver side of the truck and run to the awaiting officers. The female was screaming hysterically.

Sixteen law enforcement witnesses consisting of uniformed officers from the San Diego Police Department, Escondido Police Department and Sheriff's ASTREA unit that took part in the pursuit and planned arrest of Devenere witnessed various portions of the events.

Investigation

The crime scene was secured and an investigation was conducted by the Escondido Police Department. The investigation determined Devenere was not armed with a weapon during this incident. Devenere received one gunshot wound to his head. The audio recordings from the SDPD dispatchers, CHP dispatchers as well as the cameras on the ASTREA helicopter and witness Gomez's iPhone were reviewed for this investigation. The Gomez iPhone camera captured the shooting event from across the street as well as the sound of the rifle shot. The ASTREA camera captured portions of the pursuit and stop but the ASTREA camera did not record the shooting itself. The distance of Officer Butera's rifle shot was approximately 51 feet. Butera was armed with a Remington Model 700, Tactical .308 caliber rifle with scope. The bullet casing was recovered from an area consistent with Butera's stated location. Toxicology testing detected amphetamine, methamphetamine and cannabinoids in Mr. Devenere's system.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. Penal Code section 835a states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact

that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense and the defense of another is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

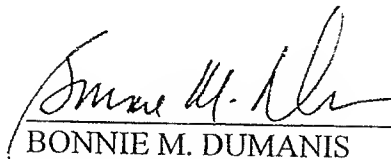
Conclusions

During this incident, Mr. Devenere was the passenger in a truck driven by his girlfriend. Devenere ordered Lauren L. to flee from the police and claimed he was armed with a gun and explosives. Devenere threatened to harm Lauren L. if police stopped him. Officers stopped the truck and could see Lauren L. being restrained by Devenere.

Based on these circumstances, Officer Butera reasonably thought Lauren L. could be seriously injured or killed. Mr. Devenere claimed he was armed with a gun and explosives when he held Lauren L. as a hostage and threatened to cause serious harm to her. Butera fired at Devenere to prevent injury or death to Lauren L. and acted in reasonable defense of another. He therefore bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files

Sincerely,



BONNIE M. DUMANIS
District Attorney
County of San Diego

BMD/PM:eg

cc: Captain Albert Guaderrama
San Diego Police Department
Homicide Division

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

June 19, 2017

Chief of Police Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Damon Arthur Seitz on March 10, 2017 by Escondido Police Officer J. White; Escondido Police Department Case No. 17002684; DA Special Operations Case No. 17-042PS; Deputy District Attorney assigned: Paul Reizen

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Homicide Unit concerning the circumstances leading to the fatal shooting of Mr. Damon Seitz by Escondido Police Officer J. White on March 10, 2017. A District Attorney Investigator responded to the scene and was briefed by your officers. This case investigation was presented to the District Attorney's Office for review on May 31, 2017.

Persons Involved

Mr. Damon Seitz was a 40-year-old male residing in the City of Escondido with his mother at the time of this incident. Escondido Police Officer J. White had been employed by the Escondido Police Department for over 11 years and was assigned to the Patrol Division at the time of the incident.

Summary

On the morning of March 10, 2017, Mr. Seitz called 911 and reported he found his mother unresponsive on her bedroom floor. Paramedics arrived and confirmed Seitz's mother's death. Escondido Police Officer White responded to assist with the death investigation. While officers were conducting their investigation, Seitz suddenly became agitated and produced a semi-automatic pistol. White ordered Seitz to drop his weapon. Seitz ignored White's commands and pointed his pistol directly at White. White shot Seitz multiple times. Seitz was transported to the hospital where he was pronounced dead. The shooting incident was captured on White's body worn camera.

Background Information

Mr. Seitz telephoned his sister (identified in this review as Mrs. S.B.) and notified her of their mother's death. S.B. told Seitz to call for an ambulance. Seitz then called 911 and reported he discovered his mother unresponsive and possibly dead. S.B.'s husband telephoned the Escondido Police Department and warned the responding officers Seitz had mental issues and was in possession of several firearms. S.B.'s husband said he also called to make sure Seitz was telling

the truth about his discovery of the mother's death. The police dispatcher informed the officers of the weapons prior to their arrival at Seitz's residence.

Statement of Officer White

Officer White responded to a death investigation call with LE1. The radio call information stated the decedent had been drinking heavily and the reporting party (Mr. Seitz) last saw his mother alive at about 9:00 p.m. on the night before. On the way to the radio call, White learned Seitz's brother-in-law alerted the police department there were firearms in the house and added Mr. Seitz had mental issues.

LE1 and Officer White arrived at the scene at about the same time. Mr. Seitz met them at the driveway of his residence and spoke with them for a short time. Seitz told White and LE1 he last saw his mother walking several days ago and discovered her body this morning. Seitz then led them inside. Seitz showed them the master bedroom where Seitz's mother was found deceased on the floor. White saw the barrels of three long rifles as he walked past a bedroom on the right side of the hallway. There was no one else in the residence.

Officer White noted inconsistencies in Mr. Seitz's responses to their death investigation questions. White checked the mother's bedroom and did not see or smell any alcohol in the bedroom. White and LE1 checked the decedent for signs of trauma but observed none. Seitz appeared to have some diminished mental capacities and may not have fully understood timeframes when answering the officers' questions.

Just prior to the shooting, LE1 and LE2 went outside to the driveway. LE1 asked Officer White to keep an eye on Mr. Seitz. Seitz was sitting in a recliner near the front door. White watched Seitz from the threshold of the front door and engaged in small talk with Seitz.

Mr. Seitz unexpectedly stood up and approached Officer White. Seitz stuck his right hand out toward White in an aggressive manner and told White to leave. Based on Seitz's actions, White began to think there may be more to the mother's death than initially stated by Seitz. White felt threatened by the way Seitz approached him and the way he was acting. White decided to detain Seitz by trying to grab Seitz's outstretched right hand to gain control of him.

As Officer White was attempting to grab Mr. Seitz's hand, Seitz stepped back and pulled out a semi-automatic pistol from his person. White did not see where Seitz had the gun concealed before that. As soon as Seitz pulled the gun, White took a step backward and drew his pistol. White yelled rapidly four to five times at Seitz to, "Drop the gun."

Mr. Seitz held the semi-automatic pistol in his right hand and manipulated the slide portion of the gun with his left hand to chamber a bullet. Seitz started to raise the gun up towards Officer White. Seitz held the pistol in front of him between his stomach and chest. White could not reach Seitz or move to a position of cover. White worried Seitz would either shoot him or the other officers. White fired his weapon four times at Seitz. The situation unfolded very rapidly and White did not have enough time to try anything else to avoid shooting Seitz. White believed he or the officers behind him would have been shot if White did not shoot Seitz.

Law Enforcement Witnesses

In addition to Officer White, there were two other law enforcement officers present at the Seitz residence at the time of the shooting. Those law enforcement witnesses are hereafter identified as Law Enforcement Witnesses One, and Two. LE1 was a patrol officer and had been employed by the Escondido Police Department for seven years with five years of previous law enforcement experience. LE2 was a patrol sergeant and had been employed by the Escondido Police Department for twelve years.

Law Enforcement Witness One (LE1)

LE1 was dispatched to investigate the report of a death. LE1 was aware Officer White volunteered to provide cover on the radio call. Both LE1 and White arrived at the Seitz residence at approximately the same time. LE1 spoke with Mr. Seitz and learned Seitz's mother had died in her bedroom. LE1 learned Seitz and his mother lived alone in that residence. LE1 obtained preliminary information from Seitz regarding the discovery of the death and asked Seitz about the last time he saw his mother alive. Seitz gave inconsistent statements to LE1 about when the body was discovered.

LE1 obtained the telephone number of Seitz's sister (Mrs. S.B.) and called S.B. to verify Seitz's claim about discovering the mother's body. LE1 stepped outside of the residence to speak on the phone with S.B. LE1 told Officer White, "I need you to stay with this guy."

Mrs. S.B. asked whether they were going to leave Mr. Seitz's guns at the house. LE1 explained if guns were registered to Seitz, he (LE1) could not take them. S.B. expressed concern for public safety because there was a school across the street and S.B. did not think Seitz should have weapons. LE1 told S.B. he would question Seitz to determine if he was stable enough to have the firearms and request Seitz's permission to take the weapons for safe keeping.

At that point, LE1 heard a commotion and noises in the background. LE1 immediately put his phone away and turned around. LE1 heard Officer White say loud and clearly, "Put the gun down. Put the gun down." LE1 ran up to White's left side at the front door. While still about six to eight feet away, he heard White repeat for the third time, "Put the gun down." When within about one foot from White, LE1 heard the racking sounds of an automatic pistol before he heard shots fired. LE1 did not know if it was White or Mr. Seitz that fired their guns.

LE1 saw Mr. Seitz with a black object in his hand as he fell to the ground in the family room. LE1 entered the house and kicked the gun from the area next to Seitz's right hand. The gun moved about three or four feet from Seitz. LE1 performed CPR on Seitz until the paramedics arrived and took over the medical intervention.

Law Enforcement Witness Two (LE2)

LE2 is a patrol sergeant. He responded to a death investigation at the Seitz residence. Upon arrival, he met with LE1 and Officer White. LE2 walked up to the residence and saw Mr. Seitz. LE2 asked Seitz if he could enter the house. Seitz invited him in and confirmed Seitz was the reporting party. LE2 offered Seitz his condolences and asked if the other two officers (White and LE1) were in the back bedroom. Seitz said they were and directed LE2 to the back bedroom.

LE2 spoke with the officers in the back bedroom. Thereafter, LE2 walked outside and stood in the driveway next to LE1, who was on the phone. Officer White was standing by the front doorway and Seitz was in the living room.

Officer White began shouting commands and LE2 believed he heard White yell several times, "Drop the gun." LE2 turned on his body worn camera. As LE2 rushed to White, he heard approximately three shots fired. LE2 saw Mr. Seitz on the ground from the shooting. Seitz's arms were out to his sides. LE2 saw a large framed handgun on the ground about five feet from Seitz's body. LE1 told LE2 he moved the gun away from Seitz. LE2 requested medics and additional patrol resources to respond to the location.

Civilian Witnesses

Investigators conducted an extensive search for witnesses throughout the neighborhood. None of the neighbors saw the events involving the fatal shooting. The majority of the neighbors were unaware of the shooting incident. Five of the neighbors said they heard the sounds of possible gunshots but did not see what happened.

Statement of Civilian Witness: S.B.

Mrs. S.B. is the sister of Mr. Seitz. S.B. informed investigators Seitz was deprived of oxygen at birth which resulted in learning disabilities. Seitz had lived with his mother his whole life. At some point, Seitz took medication for depression and other psychotropic drugs for unspecified mental illness.

Mrs. S.B. stated she had recently spoken with her mother over the phone and learned her mother had the stomach flu. S.B. called her mother again a week later, on March 9, 2017. There was no answer. S.B. left a voicemail request for a call back, but did not receive a response. S.B. thought it unusual because her mother never took that long to respond. S.B. left another message on the home phone, knowing her brother would be able to hear the message on the answering machine. On the morning of March 10, S.B. left another message on her mother's phone. S.B. then called her mother's employer and learned they had sent an employee to the Seitz residence March 7th or 8th to check on the mother's welfare. They received no answer at the door.

Mrs. S.B. received a call from Mr. Seitz a short time later. Seitz sounded upset. Seitz asked, "Are you sitting down? I have bad news about mom." S.B. asked Seitz if their mother was alive. Seitz told her, "Mom is dead." S.B. instructed Seitz to call an ambulance. Seitz told S.B. that something was wrong with him and he needed to talk to someone but it couldn't be S.B. Seitz then hung up the phone.

Mrs. S.B. stated Mr. Seitz knew the difference between right and wrong, but didn't "understand things" and his "grasp of reality was never perfect." Furthermore, Seitz previously told S.B. when he got upset, he would black out, and only realize what had happened after regaining consciousness. On one occasion, Seitz even strangled S.B. and S.B. had to call the police. Given Mr. Seitz's prior history, S.B. and her husband decided to call the Escondido Police Department to have officers do a health and wellness check on Seitz and his mother.

Mrs. S.B. was on the phone with LE1, who was at the scene investigating her mother's death. S.B. requested LE1 remove all the firearms from the home. LE1 told her he could not remove the firearms without Mr. Seitz's permission. S.B. heard Seitz in the background scream something incomprehensible and then a smashing noise. LE1 told her he had to get off the phone and the call ended.

Investigation

The scene was secured, photographed, and investigated by Escondido Police Homicide detectives. A review of the audio-recorded 911 call initiated by Mr. Seitz revealed Seitz said he discovered his mother unresponsive that morning. When Seitz was asked for more detailed information regarding the circumstances, Seitz mentioned he was a war veteran and he was upset by this event. Seitz then alleged his mother drank heavily and was last seen by him in her bedroom on the previous night. Seitz told the operator he had weapons in the house but he would put them away before the paramedics arrived.

Officer body-worn-camera video was reviewed for this investigation. Officer White turned his camera on immediately after the shooting occurred. The camera's built in memory captured the events 30 seconds prior to its activation, without the audio feature. The audio recording did not start until after the shooting ended and Mr. Seitz was lying on his living room floor. The video recorded event (without sound) depicts Seitz approaching White and pointing outward with his right hand. Seitz takes a few steps back, holding his pistol in his right hand while manipulating the slide of his pistol with his left hand. Seitz then holds his pistol with both hands while pointing it at White. White fires his handgun at Seitz, who falls to the ground. LE1 then enters the residence and kicks Seitz's firearm lying nearby his right hand from outside of Seitz's reach. LE1 and LE2 activated their body-worn cameras after the shooting occurred, and therefore, their cameras did not capture the shooting.

The crime-scene investigation revealed Officer White fired his .40 caliber firearm four times from a position outside the front doorway of the residence. Mr. Seitz received three gunshot wounds. The wounds were to Seitz's head and chest. Four expended .40 caliber shell casings were recovered at the scene. A loaded Sig Sauer 9mm pistol, Model P6, held by Seitz was recovered in the living room, near the location Seitz fell. The Sig Sauer pistol had one live round in the chamber and six rounds in the magazine. A 9mm casing was recovered from the living room but it was determined Seitz did not fire his weapon during this incident. Toxicological testing of Seitz's blood detected no alcohol, common drugs of abuse, or medications.

Legal Analysis

Under California law, Peace Officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers.

Chief Craig Carter
June 19, 2017
Page 6 of 6

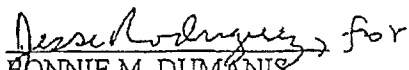
Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if he reasonably believed he or someone else was in imminent danger of suffering bodily injury, believed the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger. In determining whether a person's beliefs were reasonable, it is necessary to look at all the circumstances as perceived by the person using self-defense and to consider what a reasonable person in a similar situation with similar knowledge would have believed.

Conclusion

During this incident, Mr. Seitz called 911 to report his mother's death. Escondido police officers arrived and questioned Seitz. Seitz gave inconsistent statements regarding the discovery of his mother in her bedroom. Seitz suddenly became agitated and demanded Officer White leave his residence. Seitz is seen on video producing a loaded semi-automatic pistol and pointing it directly at Officer White. Seitz ignored White's commands to "Drop the gun." Seitz was correctly perceived as an immediate threat to the officer's life. Based on these circumstances, it is apparent Officer White fired in self-defense. White therefore bears no criminal liability for his actions.

A copy of this letter, along with the materials submitted for our review, will be retained in our files.

Sincerely,


BONNIE M. DUMANIS
District Attorney
County of San Diego

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

August 4, 2011

Chief Jim Maher
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Fatal shooting of Mr. Van Dinh Le on March 3, 2011, by Escondido Police Officer Matt Nelson; Escondido Police Department Case No. 11-02942; DA Special Operations Case No. 11-034PS; Deputy District Attorney assigned: Damon Mosler

Dear Chief Maher:

We have reviewed the reports and materials compiled by your department's Crimes of Violence Unit concerning the fatal shooting of Mr. Van Dinh Le by Officer Matt Nelson on March 3, 2011. Two District Attorney Investigators responded to the scene and were briefed by your investigators. The investigation was presented to our office for review on June 8, 2011.

Persons Involved

Mr. Van Le was fifty-one years old and lived with his wife in a two story home in the 2500 block of Hamlin Court in Escondido. He was armed with a pair of 8" scissors.

Escondido Police Officer Matt Nelson was in full uniform, assigned to patrol duties and armed with a Sig Sauer P226R .40 caliber semi-automatic pistol.

Shooting Incident

On March 3, 2011, at 8:35 a.m., uniformed Escondido Police Officers responded to a call of a suicidal man who had cut his own throat inside a second story bathroom at a home located in the 2500 block of Hamlin Court. A relative of Mr. Le's made the first 911 call reporting that Mr. Le was suicidal, mentally unstable and was acting dangerously. A neighbor made a second 911 call reporting that Mr. Le's wife, who was hysterical, told them that Mr. Le had cut his throat and had locked himself inside an upstairs room.

Officers Matt Nelson and Damien Torres were assigned to the call and arrived within a few minutes. Neighbors told the officers Mr. Le was last seen inside an upstairs bathroom bracing the door with his body. Officers Nelson and Torres entered the home and identifying themselves and their presence as they walked up the staircase to the second floor, searching adjoining bedrooms along the way. The officers eventually located Mr. Le, who had cut himself once on each side of his neck with a pair of scissors inside an upstairs bathroom.

While standing in the hallway just outside the bathroom door, Officer Nelson ordered Mr. Le at gunpoint, *"Hey! Get your hands away from the knife! Your hands away from the knife! Push it on the floor. Push that on the floor! Push it on the floor! This is the Police Department! No! No! Put it down! Put it down! Drop the scissors! Drop the scissors! We just want to help you! Don't come out here! Don't come out!"*

Immediately after Mr. Le was warned not to come out of the bathroom, he turned and advanced toward Officer Nelson while still armed with the scissors. Officer Nelson reacted by firing once at Mr. Le. Mr. Le was struck in the head by the gunshot and fell forward onto the hallway floor. He died at the scene.

Investigation

The crime scene was secured and an investigation conducted. The investigation revealed Officer Nelson fired once. A single expended .40 caliber shell casing was recovered at the scene. Mr. Le was armed with a pair of scissors, 8" in overall length, with steel blades. The scissors were recovered on the floor inches from his hands. The incident was also captured on a lapel mounted digital video camera that Officer Torres was wearing at the time. The 911 calls, police radio transmissions and the video were reviewed in detail. They all memorialized the incident in detail and corroborated the officer's statements.

Officer Nelson's Statement

Officer Nelson provided investigators with a voluntary and recorded statement. Officer Nelson said he could see from his position in the hallway that Mr. Le was staring at him from inside the bathroom through the partially opened door. Officer Nelson said he could also see that Mr. Le was standing upright in the bathroom, his hands resting on the sink and a pair of scissors were on the counter next to his right hand. When Officer Nelson saw Mr. Le pick up the scissors, he ordered Mr. Le to drop them. When Mr. Le turned, opened the door, raised the scissors and advanced and lunged toward Officer Nelson, the officer responded by firing once. Officer Nelson told investigators, *"I believe that he was going to stab me with the scissors and I fired one round."*

Autopsy

On March 4, 2011, San Diego County Deputy Medical Examiner Beth Ann Schaber performed Mr. Le's autopsy. Dr. Schaber determined Mr. Le died from a single gunshot wound to the head. He also had a number of injuries related to his suicide attempt. Those injuries included superficial stab wounds on the right side of his neck and an incised wound on the left side of his neck that transected his external jugular vein. Dr. Schaber determined the manner of Mr. Le's death was homicide.

Toxicological examinations detected a number of prescribed medications in Mr. Le's system. They included therapeutic levels of Sertraline (an anti-depressant used to treat depression, obsessive-compulsive, panic and social anxiety disorders), Desmethylsertraline (an active metabolite of Sertraline), and trace amounts of Mirtazapine (used in the treatment of major depressive disorders).

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

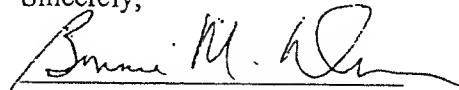
Conclusions

In this case, uniformed Escondido Police Officers Matt Nelson and Damien Torres were dispatched to a report of a suicidal man who had cut his own throat inside a second story bathroom. When Officers Nelson and Torres arrived, they identified themselves, entered the home and began looking for Mr. Le. The officers eventually found Mr. Le inside a second story bathroom armed with a pair of scissors. He was bleeding from wounds to both sides of his neck. Officer Nelson gave Mr. Le repeated commands to get his hands away from the weapon, drop the scissors, not to come out of the bathroom and that they were there to help him. When Mr. Le, while still armed with the scissors, turned, advanced and lunged toward Officer Nelson, the officer responded by firing once at Mr. Le who was struck by the gunshot and died at the scene.

Based on these events, it is apparent that Officer Nelson fired at Mr. Le in self-defense as well as in defense of Officer Torres. Officer Nelson's use of deadly force under these circumstances is therefore reasonable and he bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,



BONNIE M. DUMANIS

District Attorney
San Diego County

BMD:jh

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

February 4, 2011

Chief Jim Maher
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

**Re: Fatal shooting of Ms. Jennifer Lynn Favreau on October 15, 2009 by Escondido
Police Detective Timothy Reiley; Escondido Police Department Case No. 09-15148;
DA Special Operations Case No. 09-183PS; Deputy District Attorney assigned:
Damon Mosler**

Dear Chief Maher:

We have reviewed the reports and materials compiled by your department's Homicide Detail concerning the fatal shooting of Ms. Jennifer Favreau by Detective Timothy Reiley. A District Attorney Investigator responded to the scene and was briefed by your investigators. The investigation was presented to our office for review on May 26, 2010.

Persons Involved

Ms. Jennifer Favreau was 27 years old and lived at 1811 Grand Avenue in Escondido.

Escondido Police Detective Timothy Reiley was assigned to the Special Investigations Unit. He was armed with a Glock .40 caliber semi-automatic pistol. He was wearing civilian clothes and a black police tactical protective vest that had a cloth police badge and the words "POLICE" displayed in large white letters on the front and back of the vest.

Shooting

Officers involved in this incident included Detectives Timothy Reiley, Roger Cirilo, Chris Zach, Ross Umstot, Bodie Berreth, Matt Dixon, Joaquin Naranjo and Officer Arthur Stephens. The detectives were all wearing plain clothes. Each was also wearing either a police tactical protective vest with a cloth badge and the words POLICE visible on the front and back or had their badges displayed on lanyards around their neck. Officer Stephens was in full uniform in his marked patrol car, positioned around the corner from the exit driveway.

During the morning hours on October 15, 2009, Ms. Favreau supplied Escondido Police Detective Cirilo with information regarding a stolen car. For the past year, Ms. Favreau had been a police informant and had supplied Escondido detectives with reliable information. On this occasion, Ms. Favreau sent Cirilo text messages and also spoke to him over the phone about the stolen car. Ms. Favreau told Cirilo that her boyfriend, Christopher Ramirez, was in

possession of a stolen white Ford Focus having just dropped her off at school and he was planning on picking her up later that day and taking her back to her home in Escondido.

Based on Ms. Favreau's information, the detectives first verified that a white Ford Focus had in fact been stolen during a residential burglary in Escondido nine days earlier on October 6, 2009. They also verified that Christopher Ramirez was on active parole from California Department of Corrections for auto theft. They later located the stolen Ford parked in the driveway of Ramirez's parents' home in San Marcos. The detectives initiated a surveillance of the car, but later lost Ramirez and the car when he drove into the Palomar College parking lot.

Knowing Ramirez would eventually take Ms. Favreau home, the detectives reassembled in the parking lot of Ms. Favreau's apartment complex and waited for them to return. When Ramirez and Ms. Favreau arrived, Ramirez parked the stolen car in the lot and both he and Ms. Favreau went into Ms. Favreau's apartment. Detective Cirilo spoke to Ms. Favreau over the phone and told her he didn't want her leaving with Ramirez in the stolen car because they were intending on stopping and arresting Ramirez when he left. The plan was to arrest Ramirez in the parking lot and avoid a possible pursuit. A few minutes later Detective Cirilo observed Ramirez and Ms. Favreau exit the apartment, get into the stolen Ford and began driving away¹. Ramirez was driving and Ms. Favreau was seated in the right front seat. Sergeant Whitaker radioed the detectives, *"Just make sure that car doesn't go mobile."*

After Ramirez drove by where Detective Naranjo was parked, Naranjo backed his SUV out into the traffic lane to prevent the Ford from backing up. As Ramirez continued driving forward toward the exit, Detectives Berreth and Reiley backed their cars out of their stalls and into the path of the Ford to block its exit and prevent it from reaching the street. With Ramirez's path now blocked to the front and to the rear, Detectives Dixon and Reiley got out of their cars and started running toward the front of the stolen Ford while yelling, *"Police. Stop."*

With the detectives running toward him, with their marked police protective vests gear on, Ramirez put the Ford in reverse and accelerated backwards until he crashed into Detective Naranjo's SUV. The stolen Ford then accelerated forward toward Detectives Umstot, Zach and Reiley. Fearing he would be run over, Detective Reiley fired four times at Ramirez. The first shot missed the car and struck a rain gutter. The second shot missed Ramirez's head by an inch and struck Ms. Favreau fatally, as she leaned forward. The third shot also struck Ms. Favreau; the fourth shot hit the trunk of the stolen Ford. Ramirez continued driving forward, sideswiping Detective Berreth's car and then rammed head on into Officer Stephen's marked patrol car.

Investigation

The crime scene was secured and an investigation completed. Text messages and the recorded police radio transmissions were reviewed in detail, witnesses and officers were interviewed and the crash scenes were examined and evaluated.

¹ Radio transmissions and interviews show that not all of the responding detectives knew Ms. Favreau got into the stolen car.

The evidence revealed Detective Reiley fired four shots, the first of which missed. The second and third shots were fired through the Ford's open left rear passenger window and struck Ms. Favreau. One bullet struck her in the left shoulder, exited and penetrated her torso. This shot missed hitting the back of Ramirez's head by an inch and instead hit Ms. Favreau in the shoulder as she leaned forward. The other bullet struck her in the left hip. The fourth shot struck the left rear fender of the Ford and lodged inside. Four expended .40 caliber shell casings were recovered at the scene. The shell casings were located in areas consistent with Detective Reiley's stated firing position.

The stolen Ford Focus sustained major front end damage to the front bumper, hood, grill, left fender, left front door, right passenger mirror, left rear bumper, tail light and trunk lid. Detective Berreth's Ford Fusion sustained moderate damage to the rear bumper and trunk lid. Detective Naranjo's GMC Envoy sustained moderate damage to the right rear quarter panel. The marked Escondido patrol car sustained major front end damage to the front bumper, hood, left and right fenders, left and right headlight assemblies and front driver and passenger doors.

Analysis of the vehicles, skid marks and damage the cars sustained revealed the stolen Ford was travelling at about 20 mph when it crashed into the stopped patrol car. The force of the impact pushed the patrol car back about six feet.

Toxicological examinations of Mr. Ramirez's blood revealed the presence of both Amphetamines and Methamphetamine. After Mr. Ramirez was arrested, officers found 1.91 grams of Methamphetamine in a baggie on his person.

Witness Interviews

Several civilian witnesses heard what happened which enabled investigators to determine the sequence of the events. One civilian witness heard squeaking tires followed by a loud car crash and a voice yelling loudly followed a second or two later by at least three gunshots. A second witness heard people screaming followed by gunshots. A third witness heard a car crash followed by someone yelling, possibly commands, and then four gunshots. A fourth witness first heard a car screeching and then three or four gunshots followed by a second car crash.

Detective Cirilo saw Ramirez and Ms. Favreau get into the stolen Ford and drive away from Ms. Favreau's apartment. Cirilo radioed the other detectives, ***"Don't let them hit the street."*** When Cirilo arrived where the shooting took place he saw a commotion near the exit of the parking lot. Cirilo saw Mr. Ramirez accelerate the Ford backwards and crash into Naranjo's SUV, then accelerate forward and the sound of several gunshots. Cirilo said, ***"He was doing his best to get out of there. To get away... He stopped and then he realized the police were here and all of a sudden it went into reverse. I mean it was a split second."***

Detective Berreth saw Ramirez driving toward the exit so he backed up his car so as to block Ramirez from exiting the lot. Berreth saw Ramirez stop, put his car in reverse and then accelerate backwards crashing into Naranjo's SUV. Berreth said as he and the other detectives

were running toward the Ford, Ramirez accelerated toward them. Berreth saw Detective Reiley shoot at the driver side of the Ford as it approached his position. Berreth saw Ramirez continue forward and crash head on into a patrol car.

Detective Naranjo backed his SUV into the traffic lane to block Ramirez's escape route to the rear. Naranjo said, *"He immediately throws it in reverse and then he just starts to gun it in reverse. As he guns it he's picking up speed... He doesn't even look back. He's just focused on the (police) officers in front of him... He just smacks into the side of my car. He's surprised. He looks back towards me and then without skipping a beat puts it in gear and starts to drive forward... He's accelerating towards a group of officers who are rushing towards him... I see the three of them standing in the path of the vehicle... They're scrambling to try to get out of the path of the vehicle... He continues to go forward... and then he comes straight head-on with the patrol unit who was already blocking his path."*

Detective Dixon exited the car he was in, saw Ramirez approaching in the stolen Ford, drew his weapon and yelled out, *"Police"*. Dixon saw Ramirez stop the Ford, shift into reverse and back up and crash into Naranjo's SUV. Dixon was standing in the roadway when he saw Ramirez accelerate forward towards him and pass by. Dixon then heard three or four gunshots.

Detective Umstot was on foot when he saw the Ford accelerate backwards and crash into Naranjo's SUV. Umstot was standing in front of the Ford when it began accelerating toward him. Umstot said, *"The vehicle is coming at me... If I didn't move he was gonna hit me... I see the collision and immediately he's coming at me."* Umstot saw the Ford pass by him within two feet, heard three gunshots and then saw the Ford crash head on into Officer Stephen's marked patrol car.

Officer Stephens heard the Ford was leaving the complex and drove his patrol car into the west driveway of the lot. Stephens heard three to five gunshots and saw the Ford accelerating towards him at about 20 mph. Not having time to react, Stephens held onto the steering wheel, stomped on the brake and braced for impact. Stephens said, *"It was a pretty violent collision."*

Detective Reiley's Statement

Detective Reiley provided investigators with a voluntary and recorded statement. When Reiley saw Ramirez approaching, he backed his car into his path to prevent him from reaching the street. Reiley saw Detective Dixon running toward the Ford and heard the car's engine revving and tires squealing. Reiley exited his car and ran toward the Ford that was now backing up and saw the Ford crash into Detective Naranjo's SUV.

Reiley said, *"I could see him driving in reverse. I saw that there was a car behind him... I knew he was going to crash. And it looked deliberate."* Reiley said he and Detectives Dixon and Berreth were yelling, *"Police. Stop."* as they ran toward where Ramirez crashed into Naranjo's Envoy.

Reiley said, *"He put it in drive and revved the engine as hard as he could and started rapidly accelerating straight towards us... I was standing in about the middle of the parking lot... His car was angling to the left hand side of the road which was where I was standing in the middle trying to run and get out of his way... I looked and I could only see him through the windshield. I was only looking at him. I saw it was Christopher and I recognized him... I was trying my best to get out of his way. We were yelling "Police" and he was driving right at us. I thought he was gonna hit me or Bodie... I thought I was gonna get hit. I was trying to get out of the way. I remember I fired towards the windshield. Towards him. And I kept trying to get out of his way and move to my right and he kept coming closer and I fired... I think another three times. I remember him coming within... a foot or two of me."*

Reiley said there was no doubt that Ramirez knew he was a police officer.

Reiley said, *"He had a determined look. I thought he was going to plow through us and drive away from there."*

Reiley believed he fired his first shot toward the windshield and second, third and fourth shots into the driver's window from about two feet away as the car past him. Regarding Ms. Favreau's presence inside the car, Reiley said, *"I didn't even know she was in the car until I heard them asking for medics for a female with a gunshot wound. I never even saw her."* Reiley said the officers who radioed the car was leaving didn't radio that both a male and female got into the car. Reiley said, *"I just heard them say the car's leaving. I heard him say that the male and female were walking towards the car and then shortly after he said the car's leaving."* Reiley said the bright overhead sun prevented him from being able to see that there were two occupants in the car.

Mr. Christopher Ramirez's Statement

Christopher Ramirez supplied a recorded and Mirandized statement. Ramirez admitted he was on parole for auto theft. Ramirez said the day before this happened he was high on Methamphetamine when he saw the Ford with the keys in the ignition parked on the street. Ramirez admitted taking the car, knowing he didn't have permission to take the car and that he eventually drove it to Ms. Favreau's apartment in Escondido.

Regarding when he first noticed police officers present, Ramirez said, *"After I heard gunshots. I turned around and seen the badge on one of them, on my window."* Ramirez denied seeing the police vests the detectives were wearing or hearing any of the commands they were yelling.

Criminal Charges

On June 15, 2010, the District Attorney's Office charged Mr. Ramirez with ten felony counts, including Attempted Murder, multiple counts of ADW on a Peace Officer, Auto Theft, Burglary, Receiving Stolen Property, Possession of Methamphetamine and Vandalism. On November 17, 2010, Mr. Ramirez pled guilty to seven felony counts; three counts of Assault with a Deadly Weapon on a Peace Officer, one count of Assault with a Deadly Weapon, one count of Auto

Theft and one count of Possessing Dangerous Drugs. On January 12, 2011, Mr. Ramirez was sentenced to ten years in State Prison and ordered to pay \$9,034 in restitution.

Autopsy

On October 16, 2009, San Diego County Deputy Medical Examiner Dr. Christopher Swalwell performed Ms. Favreau's autopsy. Ms. Favreau sustained two gunshot wounds, one to the left arm that penetrated into her chest and one to the left buttocks. There was no soot or stippling associated with either wound. The cause of death was determined to be a gunshot wound to the torso. Toxicological examinations revealed Ms. Favreau had both Methamphetamine and Cannabinoids, at levels consistent with their use, in her blood. The manner of death was classified as a homicide.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

“[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ All determinations of unreasonable force ‘must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.’” [Citations omitted.]

Chief Jim Maher
February 4, 2011
Page 7 of 7

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

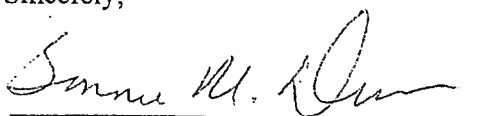
In this case, detectives wearing tactical protective vests or with badges displayed around their necks were following up on information they had received from Ms. Jennifer Favreau, a police informant. Ms. Favreau told Detective Cirilo that her boyfriend, Christopher Ramirez, was in possession of a stolen Ford Focus. This information was confirmed by Detective Cirilo. The detectives followed, lost and later located Ramirez and the stolen Ford when he and Ms. Favreau returned to Favreau's apartment in Escondido.

While detectives attempted to prevent Ramirez from driving away from the apartment he accelerated toward them when he knew the men approaching him were all armed police officers, thereby placing himself, Ms. Favreau and the detectives' safety and well-being in jeopardy. Fearing he would be run over, killed or seriously injured, Detective Reiley fired four times at Mr. Ramirez. Detective Reiley's shots nearly hit Mr. Ramirez, but two of them struck Ms. Favreau as she was leaning forward.

This is a tragic case, but based on the events as they unfolded, it's reasonable to believe Detective Reiley fired at Mr. Ramirez in self-defense and unintentionally hit Ms. Favreau. He therefore bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bonnie M. Dumanis", written over a horizontal line.

BONNIE M. DUMANIS
District Attorney
San Diego County

BMD:vf

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

November 14, 2012

Acting Chief Cory Moles
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

Re: Non-fatal shooting of Mr. Michael Joshua Flores on October 29, 2011, by Escondido Police Officer Russell Gay; Escondido Police Department Case No. 11-13963; DA Special Operations Case No. 11-099PS; Deputy District Attorney assigned: Annette H. Irving

Dear Acting Chief Moles:

We have reviewed the reports and materials compiled by your department's Crimes of Violence Unit concerning the non-fatal shooting of Mr. Michael Flores by Officer Russell Gay on October 29, 2011. A District Attorney Investigator responded to the scene and was briefed by your investigators. The investigation was presented to our office for review on July 16, 2012.

Persons Involved

At the time of the incident, Mr. Michael Flores was 27 years old and driving a 2007 Chevy Aveo.

Escondido Police Officer Russell Gay was in full uniform, assigned to patrol duties and operating a marked Escondido patrol car.

Background

Shortly after 10:00 p.m., on October 29, 2011, Ms. Garcia called the Escondido Police Department reporting that her ex-boyfriend, Mr. Flores, in violation of a temporary restraining order, had entered her apartment and was refusing to leave. Ms. Garcia fled her apartment with her cell phone and called police. She saw Mr. Flores steal her Chevy Aveo and drive two blocks away to the Go-Mart liquor store where he parked in front of the store. Ms. Garcia told the dispatcher, *"He's not supposed to be here. He's taking my car... He just stole my car... He pulled into the liquor store."*

Shooting Incident

Officer Russell Gay was assigned to Ms. Garcia's call for help. When Officer Gay arrived, Ms. Garcia flagged him down and pointed out where Mr. Flores had parked her car. Officer Gay drove to the liquor store, parked his patrol car behind the stolen Chevy and activated his

overhead emergency red and blue lights. Mr. Flores was sitting in the driver's seat of the Chevy with the engine off and the driver's window down as Officer Gay approached on foot. While standing next to the driver's door of the Chevy, Officer Gay told Mr. Flores he was investigating the theft of the car and to hand over the keys.

When Mr. Flores failed to surrender the keys and it appeared to the officer that Mr. Flores was going to start the car and flee, Officer Gay deployed pepper spray; however, Mr. Flores started the car, shifted into reverse, backed up and rammed into Officer Gay's patrol car. In order to avoid being struck by the Chevy, Officer Gay was forced to move quickly out of the path of the Chevy as the front end of the car swung around to the left. Officer Gay ran to the front sidewalk of the liquor store trying to get to an area of safety. When Mr. Flores shifted the Chevy into drive and accelerated forward toward Officer Gay, the officer drew his sidearm and fired eight shots at Mr. Flores. Mr. Flores was struck in the arms, chest and left eye by the gunfire. Mr. Flores was transported to Palomar Hospital where he was treated for his wounds before being transferred and booked into County Jail.

Investigation

The crime scene was secured and an investigation conducted. The investigation revealed Officer Gay fired eight times. Eight expended .40 caliber shell casings were recovered at the scene. All the shell casings were located in areas consistent with Officer Gay's stated firing position. Six of the shots struck and penetrated the Chevy's windshield. The Chevy sustained minor damage to its rear bumper from the impact with the patrol car. Portions of this incident were captured on the liquor store's video camera. The video, along with Ms. Garcia's 911 call and the police radio transmissions were reviewed in detail. They memorialize the incident and corroborate the officer's and the witnesses' accounts of the incident. The police radio transmissions revealed after Mr. Flores backed into the patrol car, that Officer Gay radioed, "*Code Cover he just hit my car.*" Ten seconds later Officer Gay radioed, "*Shots fired, Code Three.*" Toxicological tests revealed Mr. Flores had a blood alcohol level of .13%. The court order restraining Mr. Flores from having any contact with Ms. Garcia was issued on December 29, 2010 and was valid through December 29, 2013.

Witness Statements

Several civilians present saw Mr. Flores park the Chevy in front of the liquor store. They also saw Officer Gay arrive and park his patrol car behind the Chevy, speaking to Mr. Flores at the driver's door and shining his flashlight into the car. The witnesses saw Mr. Flores start his car, shift it into reverse while maneuvering the car and accelerate backwards and run into the patrol vehicle. The witnesses also saw Officer Gay trying to avoid being struck by the Chevy as the car advanced forward toward him and then firing at Mr. Flores as Flores continued to approach.

Officer Gay's Statement

Officer Gay provided investigators with a voluntary and recorded statement. Officer Gay said when he first contacted Mr. Flores that Flores appeared nervous. Officer Gay said he detected the odor of an alcoholic beverage and marijuana coming from inside the car, asked Mr. Flores if he was supposed to have the car and told Flores to give him the keys. Officer Gay said he told

Mr. Flores he was going to pepper spray him if he didn't comply, and then did so when Flores didn't hand over the keys. Officer Gay feared he might be run over and began backing away from the car when he saw Mr. Flores start the engine and turn the wheel. Officer Gay saw Mr. Flores accelerate the car in reverse as the front end swung around toward where Officer Gay was standing. Officer Gay saw Mr. Flores back into his patrol car, shift into drive, and then accelerate forward toward where Officer Gay had ran to on the sidewalk in front of the liquor store. As the car accelerated forward, Officer Gay feared he was going to be struck and pinned between the car and the front of the building. Officer Gay said he fired because he feared Mr. Flores was going to run him over or one of the other civilians who were also present outside the store.

Mr. Flores' Statement

Mr. Flores waived his Miranda rights and provided investigators with a voluntary and recorded statement. He admitted he'd been served with a Restraining Order which required him to stay away from Ms. Garcia; however, Mr. Flores claimed he and his ex-girlfriend were living together and that he had her permission to take her car. He admitted drinking two Vodka sodas earlier that night. He said a police officer told him to move the car and give him the keys, but he didn't know a police car was parked behind him, never saw the car's red and blue lights and didn't remember the officer spraying him with pepper spray. Mr. Flores said when he backed up the officer just started shooting at him. Mr. Flores said his car was travelling at about 20 mph when he backed into a police car that he didn't know was there. Mr. Flores denied driving forward toward the officer and said the officer was shooting at him while he was backing up.

Criminal Filing

On November 2, 2011, the District Attorney's Office charged Mr. Flores with two felony counts: Assault with a Deadly Weapon on a Peace Officer and Auto Theft. He was also charged with six misdemeanor counts which included Violating a Protective Order, Violation of a Court Order, Theft, Driving while Intoxicated, and Resisting Arrest. On September 4, 2012, Mr. Flores pled guilty to Assault with a Deadly Weapon on a Peace Officer, Auto Theft, Violating a Protective Order, Violation of a Court Order, Theft, and Driving while Intoxicated. Sentencing is scheduled to take place on December 11, 2012.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest.

Acting Chief Cory Moles
November 14, 2012
Page 4 of 4

Conclusions


In this case, uniformed Escondido Police Officer Russell Gay was in the process of investigating Mr. Flores' involvement in several crimes. When Mr. Flores refused to comply with Officer Gay's commands, he backed into Officer Gay's patrol car and then accelerated forward toward Officer Gay. The officer responded by drawing his sidearm and firing at Mr. Flores.

Based on our review of these events, it is apparent that Officer Gay fired at Mr. Flores in self-defense. His use of deadly force under these circumstances was reasonable and he therefore bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney
County of San Diego

By: 
Annette H. Irving
Deputy District Attorney
Special Operations Division

AHI:vf
cc: Captain Benton

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegocda.com>

April 15, 2014

Chief Craig Carter
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

**Re: Fatal shooting of Mr. Pedro Martinez Campos on May 4, 2013 by Escondido
Police Officers Marco Fuentes and Patrick Hand; Escondido Police Department
Case No. 1305486; DA Special Operations Case No. 13-054PS; Deputy District
Attorney assigned: Patrick McGrath**

Dear Chief Carter:

We have reviewed the reports and other materials compiled by your agency's Robbery/Homicide Unit concerning the fatal shooting of Mr. Pedro Campos by Escondido Police Officers Marco Fuentes and Patrick Hand on May 4, 2013. A District Attorney Investigator responded to the scene and was briefed by Escondido Police Investigators. This case was presented to the District Attorney's Office for review on November 13, 2013.

Summary

Mr. Campos dialed the 911 operator and asked for a response to his location. Officer Hand arrived and saw Campos was armed with a knife. Officer Fuentes and others arrived to assist. Campos ran toward Hand with the knife and both Fuentes and Hand shot Campos, fatally wounding him. A note found in Campo's pocket indicated Campos believed this would be his last day alive. The incident was partially audio and video recorded.

Persons Involved

Mr. Pedro Campos was 29 years old at the time of this incident and lived in Escondido. Campos was armed with a knife that had an approximate overall length of 7 inches with a fixed 2 ¾ inch blade. Campos was a Spanish speaker.

Officer Fuentes had been a police officer with the City of Escondido for almost six years and had 14 years of law enforcement experience when this incident occurred. Fuentes had a video camera affixed to his shirt. Officer Hand had been a police officer for two years when this incident occurred. Both officers were in full uniform and assigned to patrol duties.

Background

Mr. Campos had previously been involved in a relationship with an individual who will be referred to herein as his ex-girlfriend. She ended the relationship and asked Campos to stop communicating with her. According to Campos's sister and Campos' ex-girlfriend, Campos became despondent and began to abuse drugs. On the date of this incident, Campos sent a text message to his ex-girlfriend stating he was going to kill himself.

Officer-Involved Shooting

At approximately 10:45 p.m., Mr. Campos dialed a 911 operator on his cell phone. He then hung up. The operator called back and had a Spanish translator speak with Campos. Campos requested a patrol car and said there would be a tragedy at Citrus Avenue and East Washington Avenue if they did not show up. Officer Hand arrived and located Campos. Campos asked if Hand spoke Spanish. Hand replied he did not but would request a translator. Campos walked away from Hand and Hand followed him. Campos lifted his sweatshirt and revealed he had a knife pointed to his own stomach. Hand ordered Campos to drop the knife, but Campos disregarded the repeated orders made by Hand.

Hand drew his pistol and called for urgent assistance. Officers Paul Smyth and Marco Fuentes, along with Police Explorer Erick Ortiz arrived. Smyth deployed his Taser at Campos but it apparently had no effect. Campos took the knife away from his own stomach and charged toward Hand. Fuentes and Hand fired at Campos until he fell. While on the ground, Campos said, "thank you." Fuentes kicked the knife out of Campos' hand. Officers rendered medical aid until paramedics arrived and transported Campos to the Palomar Medical Center where he was pronounced dead.

Officer Hand's Statement

Officer Hand responded to an incomplete 911 call. Hand located Mr. Campos walking in the street and noticed Campos had one hand under his sweatshirt. After establishing Campos spoke Spanish, Hand said he had a translator coming. Campos walked away. Hand followed Campos and asked Campos to show his hands. Campos lifted his sweatshirt with one hand, exposing a knife he was holding to his own stomach with the other hand. Hand asked for immediate assistance using his police radio and broadcast that Campos had a knife. Campos made movements from one hand to the other under his sweatshirt. Hand said to Campos in Spanish, to put his hands up ("manos arriba") and to sit down ("sientese").

When Campos did not comply, Hand put his flashlight away and drew his pistol. The pistol had a flashlight attached to it, which he turned on. When Campos saw Hand had drawn his pistol, Campos increased his pace. Hand shouted at Campos to drop the knife and get on the ground. Campos disregarded Hand's order and continued walking away, increasing his speed as he walked. Hand was in the street, walking sideways and parallel to Campos. As other police cars arrived, Hand got on the sidewalk ahead of Campos. Campos slowed down his pace. Hand walked backwards away from Campos while continuing to order Campos to drop the knife.

Hand heard Smyth arrive and order Campos to drop the knife. Smyth then yelled, "Taser!" Hand heard the cycle of the Taser's electrical current. Campos stopped, raised his right hand with the knife in it, and ran toward Hand. Hand fired his weapon twice. Hand heard an additional shot. Campos dropped to the ground immediately after being shot. Hand saw Campos was still holding the knife in his hand. Fuentes kicked the knife away. Hand heard Campos say "thank you."

Officer Fuentes' Statement

Officer Fuentes, a Spanish speaker, said he volunteered to cover a radio call of a Spanish speaking person that hung up on the 911 operator. Fuentes was equipped with a department issued video camera attached to his vest. Fuentes heard Officer Hand report the suspect had a knife and Hand needed cover immediately. Fuentes arrived and saw Campos walking toward Hand. It appeared as if Hand was walking backwards, retreating from Campos. Fuentes ran toward Hand's location, which was about 60 yards away. Fuentes was worried for Hand's safety because he saw Campos walking toward Hand and Fuentes knew Campos had a knife. Fuentes ran down the middle of the street to stay out of Hand's line of fire. Hand was 10 to 12 feet in front of Campos. Campos was stopped with his right hand under his sweatshirt. Campos made movements with his hands and Officer Smyth deployed his Taser at Campos, but it had no effect. Campos started lunging towards Hand with what Fuentes thought was a weapon in Campos's right hand. Fuentes fired his pistol at Campos. Campos fell to the ground and was clutching a knife. Fuentes heard Campos say, "thank you" twice. Fuentes approached Campos and kicked the knife out of his hand. Fuentes and the officers rendered medical aid to Campos until paramedics arrived.

Officer Smyth's Statement

Officer Smyth said he was dispatched to handle a radio call regarding an incomplete phone call to the 911 operator. Police Explorer Erick Ortiz was riding along with Smyth. Smyth heard Officer Hand had arrived and saw a suspect armed with a knife. When Smyth arrived, he saw Hand had his gun out and was backing away from Campos. Smyth could not see Campos' hands because they were under a sweatshirt. Campos was moving his hands around while walking toward Hand. Smyth decided to park his car and get out. Smyth drew his pistol and pointed it at Campos. Smyth saw Campos had a knife in his hand. Smyth transitioned from pistol to Taser. Smyth pointed the red aiming light at Campos. Smyth said he yelled, "I've got Taser." Smith fired the Taser and saw one of the two barbs connect into Campos' sweatshirt. Campos ducked forward and began sprinting in the direction of Hand. Smyth heard a pop sound and Campos fell, rolling onto his back. Smyth saw that Campos had a knife in his hand. Smyth heard Campos say, "Thank you". Smyth got his trauma kit and treated the subject for his gunshot wounds.

Explorer Ortiz's Statement

Officer Smyth and Explorer Ortiz were dispatched to handle a radio call regarding an incomplete phone call to the 911 operator. As they arrived, Hand was walking alongside Campos. Smyth told Ortiz to stay in the car. Ortiz helped stop the car as it rolled when Smyth got out. Smyth joined Hand while Ortiz remained in the passenger seat of the police car. Hand and Smyth ordered Campos to stop. Campos moved his hands in and out of his pockets. Campos looked confused and kept walking. Hand was pointing his pistol and Smyth used his Taser. Ortiz saw the Taser's projectiles go towards Campos. He heard a faint clicking from the Taser, but Campos did not go down. That was when Hand fired at Campos. Campos fell. Ortiz could hear the officers say Campos had a knife. The officers then rendered medical aid.

Witness Statements

The civilian witnesses consisted of neighborhood residents. The majority of the witnesses only heard the sound of gunshots and saw police activity after the shooting. One resident was outside of his home, taking out the trash. He heard the commands, "*Get down!*" being shouted. He then heard four shots. Another resident heard yelling: "*Get on the ground!*" The resident saw a police officer following a subject. They continued yelling to the subject to get on the ground, but the subject did not comply. Another police car drove up upon the scene quickly. A Taser was used on the subject, but it had no effect. Shots were fired and the subject fell to the ground. The resident heard an officer shout that the subject had a knife. The officers then provided CPR to the subject.

Investigation

The crime scene was secured and an investigation was conducted. The investigation determined Campos received a wound to his right arm from a single Taser barb fired by Officer Smyth. The second Taser barb missed Campos. Red scratch marks were observed on Campos' abdomen, consistent with marks that could have been made with a knife. Campos received four gunshot wounds. The wounds were to Campos's right chest, right upper back, right flank and right arm. Officer Fuentes fired his pistol three times and Officer Hand fired twice. Five expended .40 caliber shell casings were recovered at the scene. One of the officers' rounds missed Campos and was not located.

The video and audio recording from Fuentes's body camera was reviewed and captured the shooting. The video reveals commands were made to Campos and Campos ran at Hand prior to shots being fired. The call from the 911 Operator to Campos was also reviewed.

The fixed blade knife Mr. Campos was armed with was recovered near the location that Campos fell. A piece of paper was recovered from Campos' pants pocket. The paper was a handwritten note addressed from Campos to his ex-girlfriend indicating this day was the last day Campos would be alive. The note said Campos had drugged himself because he could not stand being without his ex-girlfriend. A toxicology report detailed that there was methamphetamine and amphetamine in Campos' blood.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.' All determinations of unreasonable force 'must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.'" [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

Conclusions

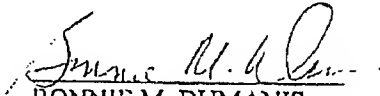
During this incident, uniformed police officers Hand and Fuentes responded to a radio call of a request for police. As Hand arrived and investigated the request for help, Campos produced a knife and held it to his own body. Fuentes' video camera recorded that as Fuentes arrived at the scene, Campos ran toward Hand while armed with the knife.

Chief Craig Carter
April 15, 2014
Page 6 of 6

Based on these circumstances, Officer Hand fired at Mr. Campos in self-defense. Officer Fuentes fired in reasonable defense of Officer Hand. Therefore, neither Fuentes nor Hand have any criminal liability for their actions.

A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,


BONNIE M. DUMANIS
District Attorney
County of San Diego

BMD;jh

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
BONNIE M. DUMANIS
DISTRICT ATTORNEY

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

March 8, 2011

Chief Jim Maher
Escondido Police Department
1163 North Centre City Parkway
Escondido, CA 92026

**Re: Fatal shooting of Mr. Randy Wayne Mullins on March 30, 2010, by Escondido
Police Officer Brandon Byler; Escondido Police Department Case No. 10-05310;
DA Special Operations Case No. 10-025PS; Deputy District Attorney assigned:
Paul Azevedo**

Dear Chief Maher:

We have reviewed the reports and materials compiled by your department's Homicide Detail concerning the fatal shooting of Mr. Randy Mullins by Officer Brandon Byler on March 30, 2010. A District Attorney Investigator responded to the scene and was briefed by your investigators. The investigation was presented to our office for review on January 12, 2011.

Persons Involved

Mr. Randy Mullins was twenty-five years old and lived with his wife in an apartment in the 300 block of West 10th Avenue in Escondido. At the time of the shooting, he was armed with an unloaded, Marlin brand, twelve gauge pump shotgun.

Escondido Police Officer Brandon Byler was in full uniform, assigned to patrol duties and armed with a Glock .40 caliber semi-automatic pistol.

Shooting Incident

On March 30, 2010, at 2:57 a.m., uniformed Escondido Police Officers Brandon Byler and Jared Lunt were dispatched to a domestic disturbance at a home in the 300 block of West 10th Avenue. When the officers arrived, they met the calling party who pointed out to them the home where the disturbance was taking place. The officers heard a man yelling and a woman crying. Officer Lunt went to the front door and knocked. Officer Byler heard Lunt announce their presence. Officer Lunt then stepped back and away from the front door. When Officer Lunt approached the door a second time, he heard the sound of a shotgun being racked inside the home.

Seconds later Mr. Mullins opened the door while armed with a twelve gauge pump shotgun. Officer Lunt moved backwards away from the door and ran for cover while yelling to Officer Byler, "*He's got a shotgun!*" When Mr. Mullins leveled the shotgun at Officer Lunt, Officer Byler, who was standing on the opposite side of the door, reached around and grabbed the barrel of the shotgun with his left hand. Officer Byler and Mr. Mullins began struggling over control of the weapon. During the struggle for the gun, Officer Byler drew his handgun with his right hand and began firing at Mr. Mullins. Officer Byler continued firing until he was able to physically take the shotgun away from Mr. Mullins. Mr. Mullins was struck by the gunfire, released his grip on the shotgun and fell backward onto the floor. Mr. Mullins died at the scene.

Investigation

The crime scene was secured and an investigation conducted. The investigation revealed Officer Byler fired sixteen times, thirteen shots struck Mr. Mullins. Sixteen expended .40 caliber shell casings were recovered at the scene and all were located in areas consistent with Officer Byler's stated firing position. The weapon Mr. Mullins was armed with, an unloaded Marlin brand twelve gauge pump shotgun was recovered at the scene. Damage to the front door indicated the barrel of the shotgun struck the door during the struggle. Found inside the home were empty Budweiser beer cans, empty Sangria and tequila bottles and four sandwich bags containing over six ounces of marijuana. Mrs. Mullins had fresh scratches on her chest and arm that were photographed.

After the shooting the police interviewed neighbors. One party told police she heard the woman crying and screaming. When the police arrived, this person heard the police knock on the door. She then heard an officer say, "Put down the gun!" twice, and heard shots fired.

The 911 call and police radio transmissions were reviewed in detail. The 911 caller said he heard a male and female arguing. He called back a second time saying he heard things breaking inside the home. While standing at the front door, Officer Lunt radioed he heard a shotgun being racked. Twelve seconds later Officer Lunt radioed shots had been fired.

Mrs. Mullins' Statement

Mr. Mullins' wife was interviewed. She said her husband had tequila that night with dinner. Later they both went together to a local bar. They returned home at about one o'clock in the morning. Mrs. Mullins said her husband took his shotgun out of the gun safe and was talking to her while showing her how to load and unload the shotgun. She denied arguing with her husband that night. She said her husband was never standing by the front door and was getting ready to put the gun back in the safe when the police opened the door and shot him. She said her husband did not open the door and never pointed the gun. She said the scratches on her body were from playing with her dog and a scar from a long ago.

Officer Byler's Statement

Officer Byler provided investigators with a voluntary and recorded statement. Upon arriving at the scene, Officer Byler could hear a male subject yelling. He described it as "*loud, angry, furious yelling and screaming.*" After Officers Byler and Lunt contacted the reporting party,

they approached the home and the yelling stopped. After waiting a short time, Officer Lunt knocked on the door. Officer Byler said he was standing off to the side when he saw Officer Lunt run away from the doorway and dive for cover while yelling, "He's got a shotgun!" Officer Byler then saw a man standing in the doorway holding a shotgun. When the man leveled the shotgun and aimed it toward Officer Lunt, Officer Byler said he reached around and grabbed the shotgun by the barrel end. As they fought and wrestled over control of the shotgun, the man tried wrenching and twisting the gun away. Officer Byler said he drew his handgun and fired until he had control of the shotgun and the man fell to the floor.

Officer Byler said, *"I was in struggle for my life and I remember fighting with him with the shotgun. I remember him bringing the shotgun down to get a bead on Jared...and there's no doubt in my mind that, I felt that, if I had been a second too late that it would have been a coin flip and that round would have went off and it may or may not have hit Jared and then he could have turned it on me because I was standing right there in front of him and, ...there was no other course of action for me in, in my mind."*

Autopsy

Mr. Mullins' autopsy was conducted by the San Diego County Chief Medical Examiner Glenn N. Wagner on March 31, 2010. The Medical Examiner determined Mr. Mullins sustained thirteen gunshot wounds to the torso. Fine stippling was associated with a cluster of four of the wounds. Toxicological examinations revealed Mr. Mullins' blood alcohol level was .21%, and he also had marijuana in his system.

Legal Analysis

This review was conducted pursuant to the joint protocol between this office and all San Diego law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect an arrest because of that person's resistance. Penal Code section 196 declares that homicide is justifiable when committed by public officers when necessarily committed in overcoming actual resistance in the discharge of any legal duty.

In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S.

Ninth Circuit Court of Appeals, in the case of *Scott v. Henrich* (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

“[P]olice may use only such force as is objectively reasonable under the circumstances. An officer’s use of deadly force is reasonable only if ‘the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.’ All determinations of unreasonable force ‘must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.’” [Citations omitted.]

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self defense is available to any person. Homicide is justifiable in accordance with Penal Code 197 when resisting any attempt by a person to commit great bodily injury on or kill any person.

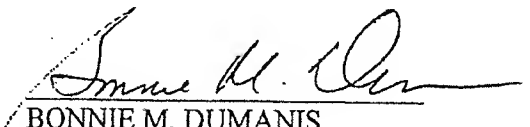
Conclusions

In this case, uniformed Escondido Police Officers Brandon Byler and Jared Lunt were dispatched to a domestic disturbance. The caller reported hearing a man and woman arguing, things breaking inside the home and pointed out the home to the officers. Both officers heard a man yelling at a woman who was crying inside the home. After the officers announced their presence at the door, Mr. Mullins, who was intoxicated, opened the door while armed with a shotgun. When Mr. Mullins leveled and pointed the shotgun toward Officer Lunt, Officer Byler grabbed the shotgun by the barrel. While fighting over control of the gun, Officer Byler drew his handgun and fired at Mr. Mullins who was struck by the gunfire and died at the scene.

In this case, Officer Byler fired at Mr. Mullins in self-defense as well as in defense of Officer Lunt. Officer Byler’s use of deadly force under these circumstances is therefore reasonable and he bears no criminal liability for his actions.

A copy of this letter along with the materials submitted for our review will be retained in our files.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bonnie M. Dumanis", is written over a horizontal line.

BONNIE M. DUMANIS

District Attorney
San Diego County

BMD:jh